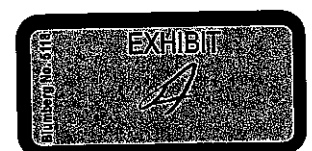


## **TABLE OF EXHIBITS**

1. **Exhibit A** – Table of Exhibits.
2. **Exhibit B** – VIP License.
3. **Composite Exhibit C** – Independent Contractor Agreement and Onboarding Documents.
4. **Exhibit D** – Deposition of Cruz.
5. **Exhibit E** – Deposition of Ramirez.
6. **Exhibit F** – Deposition of McKinnon as Corporate Representative of VIP.
7. **Exhibit G** – Affidavit of A.G.M.
8. **Composite Exhibit H** – Fla. Stat. §§ 400.462; 400.506.
9. **Exhibit I** – FAB.
10. **Exhibit J** – VIP Broward County Action Complaint.
11. **Exhibit K** – Broward County Action Substitution of Counsel and Voluntary Dismissal.



View current license information at: [Floridahealthfinder.gov](http://Floridahealthfinder.gov)

LICENSE #: 299995738  
CERTIFICATE #: 60922

**State of Florida**  
AGENCY FOR HEALTH CARE ADMINISTRATION  
DIVISION OF HEALTH QUALITY ASSURANCE

**Home Health Agency**  
LICENSED

This is to confirm that ALL VIP CARE INC has complied with rules and regulations adopted by the State of Florida, Agency for Health Care Administration, authorized in Chapter 400, Part III, Florida Statutes, and Chapter 59A-8 of the Florida Administrative Code and is authorized to operate the following:

**Service Area:**

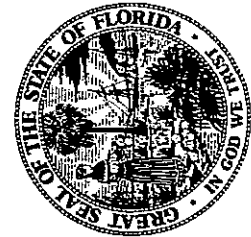
Indian River, Martin, Okeechobee, Palm Beach, St. Lucie

**Skilled Services:**

**Other Services:**

Home Health Aide, Certified Nursing Assistant

**ALL VIP CARE, INC**  
5601 Corporate Wy Ste 204  
West Palm Beach, FL 33407



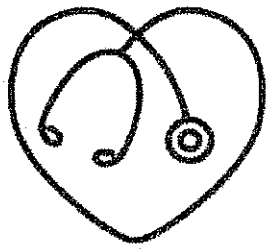
A handwritten signature in black ink, appearing to be "J. Weida".

Jason Weida, Secretary

EFFECTIVE DATE: 02/24/2023

EXPIRATION DATE: 02/23/2025





# All VIP Care

Dear Independent Contractor:

Your application for work/assignment is a legal document.

Therefore, falsifying documents is a criminal offense and is considered to be a white-collar crime. This involves altering, changing, modifying, passing or possessing documents for an unlawful purpose. Including putting false information on your application.

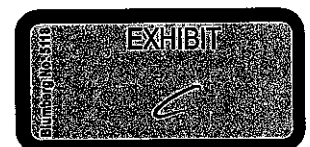
This WILL result in immediate termination from All VIP Care, Inc. roster and your certificate/license will be reported to the state/Palm Beach County.

By signing below, you are stating your application is truthful to the best of your knowledge.

Signature

5-3-21

Date



All VIP 26 A 000001

## APPLICATION FOR CONTRACT OR EMPLOYMENT WITH THE REGISTRY

## Section 1: Contact Information

Last: <u>Valdivieso</u>	First: <u>Cruz</u>	MI:
Address: <u>6401 PERRY ST Hollywood</u>		
City: <u>Hollywood</u>	State:	Zip: <u>33024</u>
Home Phone:	Cell Phone:	
Email Address:		
Date of Birth:	Social Security Number:	

## Section 2: Desired Employment or Contract

Position: <u>C.H.M.A.</u>	Date Available to Start: <u>12/1/2020</u>
Are you currently employed? <u>Y</u> <u>N</u>	
If employed, may we contact your current employer(s)? <u>Y</u> <u>N</u>	
Have you applied to our nurse registry before? <u>Y</u> <u>N</u>	
If so, when?	

## Section 3: Education

Type of School	Name	Address/Location	Years Attended	Date Graduated	Diploma/Degree
High School	<u>Alarico Guiz</u>	<u>Venezuela</u>			
College					
Graduate School					
Trade, Business, or Specialty School					

## Section 4: Employment/Contractual History (list in chronological order with last or present employer first)

Employer: <u>SUGA VARNER</u>		Job title:	
Address:			
Phone:		Duties:	
Date from:	Date to:	Salary:	Name of Supervisor:
Reason for leaving:			
Employer:		Job title:	
Address:			
Phone:		Duties:	
Date from:	Date to:	Salary:	Name of Supervisor:
Reason for leaving:			
Employer:		Job title:	
Address:			
Phone:		Duties:	
Date from:	Date to:	Salary:	Name of Supervisor:

Reason for leaving:			
Employer:		Job title:	
Address:			
Phone:		Duties:	
Date from:	Date to:	Salary:	Name of Supervisor:
Reason for leaving:			

Employer:		Job title:	
Address:			
Phone:		Duties:	
Date from:	Date to:	Salary:	Name of Supervisor:
Reason for leaving:			

If additional space is required, please utilize the back of the application form to list additional past employers.

#### Section 5: Professional License(s), Registration(s), and/or Certification(s)

Type	License/Certification #	Date Issued	Expiration/ Renewal Date	State Issued

#### ADDITIONAL INFORMATION:

Are you eligible to work in the United States? ☐ Yes ☐ No

If No, why not? \_\_\_\_\_

Are you willing to work any shift, including nights and weekends? ☐ Yes ☐ No

Are you willing to accept a live-in assignment? ☐ Yes ☐ No

How soon following notification can you start? \_\_\_\_\_

Please indicate days and hours available to work. If you are unavailable on certain days/times, please indicate below as well.

No Preference ☒ \_\_\_\_\_  
Monday \_\_\_\_\_  
Tuesday \_\_\_\_\_  
Wednesday \_\_\_\_\_  
Thursday \_\_\_\_\_  
Friday \_\_\_\_\_  
Saturday \_\_\_\_\_  
Sunday \_\_\_\_\_

Have you ever been convicted of a crime? ☐ Yes ☒ No

If yes, explain number of conviction(s), nature of offense(s) leading to conviction(s), how recently such offense(s) was/were committed, sentence(s) imposed, and type of rehabilitation: \_\_\_\_\_

Have you had a break in providing services under your license or certification for greater than 90 days? ☒ Yes ☐ No ☐ N/A

Have you maintained continuous U.S. residency for at least five years? ☒ Yes ☐ No

Do you have a valid driver's license? ☒ Yes ☐ No ☐ N/A

Languages Spoken: SOLO ESPAÑOL

Languages Read/Written: \_\_\_\_\_

Additional information/skills/knowledge/license(s) applicable to position you are applying for: \_\_\_\_\_

**Statement Regarding Application:** The information contained on this application is complete and accurate. I hereby authorize verification of any and all information contained in this application and on my resume, if provided. I certify that such statements are true, and understand that misrepresentation or omission of facts called for in this form, or on any resume provided by me, is cause for termination of employment or contract without notice.

Signature [Signature]

Date 5-3-21

Printed Name CRUZ VALEDES

**THIS NURSE REGISTRY IS AN EQUAL OPPORTUNITY EMPLOYER. NO PERSON SHALL BE DENIED EMPLOYMENT ON THE BASIS OF RACE, AGE, ETHNICITY, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, RELIGION, CREED, VETERAN STATUS, MARITAL STATUS, DISABILITY OR ANY OTHER LEGALLY PROTECTED STATUS. Employment or contract is contingent upon furnishing evidence of identity, employment eligibility, and qualifications.**

## ACKNOWLEDGMENT OF NURSE REGISTRY POLICY & PROCEDURE

### CONFIDENTIALITY STATEMENT

Initials: CV

I understand that the nurse registry abides by all standards set out by state and federal privacy laws (i.e. HIPAA). I have been instructed on maintaining the confidentiality of medical records, the privacy of client's protected health information (PHI), as well as any other proprietary information regarding the nurse registry. I am aware of and understand the nurse registry's policies relating to use, collection, disclosure, storage, and destruction of client's PHI. I understand that medical information regarding the client may only be discussed with authorized individuals. I hereby pledge that I will not access or use client's PHI except as required in the course of my duties and in accordance with applicable legislation and the nurse registry's policies. I will take the appropriate measures to keep confidential all PHI and proprietary information regarding the nurse registry both during my employment and after my employment or association ends with the nurse registry. Nurse registry records, including personnel files and manuals, are deemed privileged and confidential and shall be stored and maintained in such a manner as to maintain their confidentiality. I acknowledge that any unauthorized use or disclosure of a client's health information or breach of confidentiality with the nurse registry will result in disciplinary action up to and including termination of employment or my contract.

### TAX EXEMPT STATUS

Initials: CV

I hereby acknowledge that I am an Independent Contractor working for the registry. Therefore, I am responsible for applicable state and federal taxes, such as Social Security. I also acknowledge that I will receive an IRS Form 1099 for each year that I am a subcontractor of the registry. This form will also be sent to the Internal Revenue Service (IRS). As an independent contractor, I further acknowledge that I am not eligible to receive any benefits such as vacations, health insurance, disability, or unemployment and will not be covered by Worker's Compensation or other insurance policies of the registry. I agree to maintain insurance coverage and policies applicable to my profession, if indicated.

### PERFORMANCE REVIEW

Initials: CV

I have been informed that my work performance will be evaluated on an ongoing basis and that I will receive a written evaluation of my work performance by each facility to which I am referred for an assignment on an annual basis. I understand that I will also be assessed by the registry for competency as it relates to the performance of my job duties.

### CODE OF CONDUCT

Initials: CV

It is the objective of the nurse registry to provide services in accordance with all applicable laws, regulations and statutes. The nurse registry believes that its independent contractors share this objective and wish to perform their jobs in a competent, legal and ethical manner and thus, have established a Code of Conduct as a demonstration of that commitment. I hereby certify that I have received, read and agree to abide by this Code of Conduct. Therefore, I agree to:

- Always perform my duties and responsibilities to the best of my ability.
- Treat all clients with care, courtesy and respect and maintain client confidentiality at all times.
- Protect all client rights and report any failure to observe client rights by any person promptly.
- Always speak truthfully to all persons with whom I have contact in the course of my duties, including clients, family members, other independent contractors and government officials.
- Obey all laws which may apply to the performance of my duties.
- Make sure all documents or records which I prepare contain only accurate and truthful information.
- Observe all other standards of conduct which apply to my position.
- Report any activities that may violate this Code of Conduct to the nurse registry's owner.

**DRUG AND ALCOHOL SCREENING**Initials: CRV

I understand that the nurse registry is a drug free workplace. I understand that urine and/or blood testing for alcohol and/or drug use may be requested during the course of my contractual relationship with the registry. Such testing may be randomly requested or requested due to the registry's suspicion that I am under the influence of alcohol and/or drugs that have the potential to result in an on-the-job injury or negatively impact the quality of my work and/or the safety and quality of care I provide to nurse registry clients or the facilities with which I work. I authorize that such testing may be requested of me at the discretion of nurse registry management. I accept this as a condition of my contract. I agree to allow such testing to be completed at a time and place to be chosen by registry management. I further authorize the results of such testing to be released to the registry and any facility or business to which I am referred for assignment by the registry.

**APPLICATION FOR CONTRACT REVIEW:**Initials: CRV

I certify that the information I have provided during the course of applying for this position and interviewing with the nurse registry is true and correct, including but not limited to the application, my resume, and documentation for my registration folder/personnel file. I authorize the exchange of information required for the nurse registry to complete a thorough investigation of my work history and qualifications. I hereby release from liability all persons who provide information to the nurse registry during the course of any such investigation. I understand that any falsification of information on my behalf may subject me to immediate termination of my contract with the registry.

Should I be offered a contractor position with the nurse registry, I have read and agree to the terms specified in the job description provided. I understand that I may be asked to perform additional responsibilities as applicable to my position with the nurse registry and per the request of management. I agree that, as a requirement of my employment or contract, that I will provide the nurse registry with a 14 day written advance notice of intent to terminate my contract. I agree to comply with OSHA standards under the Occupational Safety and Health Act of 1970 and have been informed of my right to file a complaint with the nearest OSHA office.

**ACCEPTANCE OF CONTRACT**Initials: CRV

I have been informed that the nurse registry is an equal employment opportunity employer that adheres to a policy of making employment and contractual relationship decisions without regard to race, color, sex, religion, national origin, handicap, marital status, or any other legally protected status. The nurse registry will comply, at all times, with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all requirements imposed pursuant thereto, to the end that no person shall be discriminated against. My opportunity to contract with the nurse registry depends solely upon my qualifications and ability to perform the assigned job duties. The nurse registry's non-discrimination policy applies to clients, healthcare providers, and all personnel and independent contractors.

I understand the nurse registry operates under the principles of affording equal opportunity for qualified handicapped individuals, qualified veterans of the Vietnam era, and qualified disabled veterans. All applicants who believe themselves to be members of one or more of these groups, and who wish to identify themselves as such for the purpose of affirmative action consideration are invited to do so. Submission of this information is voluntary and refusal to provide it will not subject you to discharge or disciplinary treatment. Information obtained concerning individuals shall be kept confidential, except that (1) supervisors and managers may be informed regarding disabled veterans and handicapped individuals, (2) first aid and safety personnel may be informed as necessary, when and to the extent appropriate, if the condition might require emergency treatment, and (3) government officials investigating compliance will be informed.

I wish to volunteer the following information. I qualify under the following (check one):

- ☐ I do not qualify  
☐ Handicapped

- ☐ Vietnam Era Veteran  
☒ Disabled Veteran

**RECEIPT OF INFORMATION:**Initials: CRV

I attest that I have been provided with information regarding the operation of this nurse registry applicable to my contractual obligation. This information included a review of daily business operations, policy and procedure, client services, documentation requirements, contractual obligations, and the mission, vision, and values of the nurse registry. I have read and understand the policies and procedures of the nurse registry and have had the opportunity to have all of my concerns and/or questions resolved to my complete satisfaction. I understand that nurse registry policies and procedures, including personnel policies, may be modified and that they are not intended to be a guarantee of my continued contractual relationship with the nurse registry. I will abide by all policies at all times and will not amend or compromise these policies under any circumstances. I understand that failure to comply with nurse registry policy is grounds for termination of my contract with the nurse registry.

**TRANSPORTATION RESPONSIBILITY:**Initials: CRV

I attest that I have reliable transportation to be used for travel to and from client assignments. I further understand that I am responsible for maintaining and submitting proof of automobile insurance that minimally meets state requirements for insurance, if I intend to utilize my own vehicle as means for transportation.

**RECEIPT OF PERSONAL PROTECTIVE EQUIPMENT:**Initials: CRV

I understand the hazards of my position with the nurse registry. I attest that I have been properly instructed in the use of personal protective equipment (PPE) and that the nurse registry has supplied me with appropriate PPE, as applicable to my position with the nurse registry. I agree that, as a condition of my contract, I am required to follow the established protocols for the use of PPE while providing client care and services.

**STATEMENT OF COMMITMENT:**Initials: CRV

In compliance with the nurse registry's policies and procedures, I agree to abide by the following guidelines:

- I agree to wear my identification during assignment.
- I will carry my professional license or certification with me at all times during working hours at a health care facility and agree to produce such a record for review by the health care facility, upon request.
- I will always maintain professionalism in the home to which I am referred or the facility or business to which I am referred.
- I will contact the nurse registry regarding any areas of discrepancy between the assignment and my ability to carry out that assignment (whether it is in a private home or facility/agency). I will also contact the nurse registry if I identify any discrepancy between the assignment and the care needs of the client.
- I will not accept any money or gifts from the client/caregiver. I will receive payment for services rendered directly from the nurse registry and not from the clients to whom I provide services.
- I will notify the nurse registry if I am unable to arrive for my assignment at the scheduled time or if I am unable to meet my assignment commitment. I understand that the nurse registry will contact the client/caregiver or facility to make alternative arrangements. I also understand that not notifying the nurse registry is grounds for termination of my contract.
- I will not make or accept personal telephone calls at the client's home.
- I will not smoke at the client's home.
- I will not send anyone else to the client's home to complete my assignment and I will not take anyone with me to the client's home to assist me in completing my assignment. I acknowledge that violation of this policy is grounds for termination of my contract.
- I will accept assignments on a case-by-case basis and I may accept or reject any assignment offered by

the nurse registry. Once I accept an assignment, I am obligated to fulfill that assignment.

- I will provide care in a manner that does not discriminate against clients on the basis of race, color, national origin, handicap, age, or any other legally protected status.
- I will complete and submit all documentation per nurse registry policy. I understand the nurse registry may withhold payment if documentation pertaining to the services I have provided is not accurate and completed in a timely manner.
- I understand that habitual tardiness, excessive cancellations, and failure to report to an assignment are cause for the termination of my contract with the nurse registry.

**VISIT NOTES POLICY:**

Initials: CRV

I understand that it is nurse registry policy for visit notes and all other documentation for a client's file to be written and submitted to the Administrator weekly. I will ensure complete, concise documentation as required per nurse registry policy and procedure and submit my visit notes on a weekly basis and on time. I understand that failure to do so will result in a delay in receiving my paycheck and may result in other disciplinary action, up to and including termination of my contract.

**COVENANT NOT TO COMPETE:**

Initials: CRV

During the term of my contract with the nurse registry and for a period of at least one year thereafter, I will not contact a nurse registry client, directly or indirectly, either for his/her own account or otherwise; to be employed by, participate in, consult with, perform services for, or otherwise be connected with any business the same as or similar to the business conducted by the nurse registry. I agree to notify the nurse registry in the event that a client attempts to arrange for services directly with me. I agree not to accept assignment from any client of the nurse registry for a period of at least one year following my separation from the nurse registry and/or termination of my contract. In the event of a breach, a threatened breach, and failure to comply with this section, the nurse registry shall be entitled to obtain an injunction restraining the commitments or continuance of the breach, as well as any other legal or equitable remedies as permitted by law.

**SCHEDULED VISITS:**

Initials: CRV

I have been informed that the continuity of client care is of utmost importance and services must be provided in accordance with a client's plan of care. I acknowledge that I will provide services to clients exactly as they are assigned. I will not let any assignment from this nurse registry overlap with those assigned to me by other facilities or agencies and I will fulfill my responsibilities as directed. I understand that I work for the nurse registry as an independent contractor and that the clients I provide services to belong to the nurse registry or facility to which I am assigned. I acknowledge that I am strictly prohibited from transferring or attempting to transfer any client case to another nurse registry, agency, or facility.

**CONFLICT OF INTEREST:**

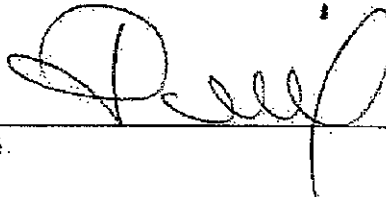
Initials: CRV

Elite Senior Management policy prohibits its contractors from engaging in any activity, practice or act which conflicts with or appears to conflict with the interest of the registry. It is impossible to describe all the situations, which may cause or give the appearance of a conflict of interest. Therefore, the prohibitions included here in this policy are not exhaustive of all potential conflicts of interest. It is the obligation of contractors to report any potential conflicts to supervisory staff. Contractors are not to engage in directly or indirectly in any conduct in which is disloyal, disruptive, competitive, or damaging to the registry. Contractors are prohibited from accepting any employment with any organization that does business with the Registry.

I have read and understand the above information concerning the policies and procedures of the nurse registry. I agree to abide by the policies and procedures of the nurse registry, including personnel policies, and have been informed that failure to do so may result in disciplinary action up to and including termination of my contract.

@RVZ Daicelys Valdivia

Name (Please print)



Signature

5.3.21

Date

### INDEPENDENT CONTRACTOR AGREEMENT

This independent contractor agreement (hereinafter referred to as "the Agreement") is made and entered into this day, 5-3-21, by and between ALL VIP CARE, INC. a Florida corporation and licensed nurse registry (hereinafter referred to as "Company"), and 01202-DJ00457710/07/2020 SS# [REDACTED] (hereinafter referred to as "Contractor").

WHEREAS, "Nurse registry," per 400.462(21), F.S., means any person that procures, offers, promises, or attempts to secure healthcare-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including, but not limited to, contracts for the provision of services to clients and contracts to provide private duty or staffing services to health care facilities licensed under chapter 395 or this chapter or other business entities.

WHEREAS, "Staffing services," per 400.462 (29) F.S., means services provided to a health care facility, school, or other business entity on a temporary or school-year basis pursuant to a written contract by licensed health care personnel and by certified nursing assistants and home health aides who are employed by, or work under the auspices of, a licensed home health agency or who are registered with a licensed nurse registry. WHEREAS, Company desires to contract with said Contractor to perform services in accordance with the terms of this Agreement.

WHEREAS, Company hereby contracts with Contractor to fulfill the following indicated position as an independent contractor of the nurse registry:

<input type="checkbox"/> Registered Nurse	<input type="checkbox"/> Certified Nursing Assistant
<input type="checkbox"/> Licensed Practical Nurse	<input type="checkbox"/> Homemaker/Companion
<input checked="" type="checkbox"/> Home Health Aide	

NOW, THEREFORE, in consideration of these premises, mutual promises, covenants terms and conditions contained herein, and other good and valuable considerations, the parties acknowledge the receipt and sufficiency of which, the parties agree as follows:

#### CONTRACTOR APPOINTMENT

Said duties will be carried out in accordance with all applicable law and regulation as well as applicable nurse registry policy and procedure. Job responsibilities are specified in Contractor's job description for the position indicated above. Contractor must continually meet all personnel qualifications, as set forth in said job description as well as applicable state and federal law and regulation. Contractor does hereby attest that he/she is licensed or certified in the State of Florida (if required for the position) and that he/she shall notify Company of any change, modification, disciplinary action or any event that may otherwise affect the validity, active status, or impair in any manner the underlying license or certification of said Contractor. Contractor hereby accepts such appointment and is willing to perform these services in accordance with the terms hereinafter set forth. Contractor shall provide services to clients in private homes or healthcare facilities, agencies or other organizations to which the registry refers the services of Contractor at such times and at such places specified by Company in its relationships with those individuals or organizations.

#### **SERVICES OVERSIGHT—CONTRACTOR AND COMPANY RESPONSIBILITIES**

Company will retain and maintain all clinical records of clients to whom services are provided in their private homes. Services to be provided through a contractual relationship with another business entity or healthcare facility will be coordinated between Company and said entity in accordance with registry policy and applicable law and regulation governing the provision of these services. Services will be properly coordinated by Contractor and/or the supervisor or designee. Contractor's services will be provided in accordance with the client's Plan of Care (hereinafter referred to as 'POC') and Company is responsible for the scheduling of home visits and periodic client evaluation according to the client's POC, when applicable. Referrals will be given to Contractor in accordance with the duties Contractor is lawfully allowed and competent to perform and for which the nurse registry is licensed. Contractor is responsible for participating in a client's POC within the scope of his/her practice as defined by law and regulation and in accordance with nurse registry policy and procedure as well as the policies of the entity to which Contractor may be referred. Company will use Contractor when Company deems it necessary and in its sole discretion determines that the skills and qualifications of Contractor are appropriate to meet client care needs and will provide those services according to the schedule set forth and authorized by Company. Both Company and Contractor agree that the Company (in conjunction with healthcare entities to which the Contractor is referred) will also coordinate client assessments, reassessments, formulation and revision of plans and discharge planning, the schedule for home visits, supervision, and case management. Contractor shall participate with Company in these activities as qualified and appropriate to his/her position and professional privileges.

#### **CONTRACTOR'S REPRESENTATION**

Contractor represents to Company that Contractor is, and will continue to be during the term of this Agreement, duly licensed as necessary in the State of Florida to provide the services hereunder, and the execution of this Agreement by the Contractor does not conflict with any other agreement to which the Contractor is a party. Contractor also represents that Contractor will perform hereunder without negligence and in compliance with all applicable laws including, without limitation, professional regulations. Contractor will dress appropriately while providing services and comply with registry policies.

#### **TAX LIABILITY**

Company shall not be liable for withholding any tax, social security taxes, worker's compensation or other expense or liability attributable to an employer/independent contractor relationship. Contractor agrees to accept responsibility for the payment of self-employment taxes, as applicable and in accordance with state and federal law. Contractor accepts responsibility for applicable state and federal taxes, such as Social Security. Contractor also acknowledges that he/she will receive an IRS Form 1099 for each year as a subcontractor of the registry. This form will be sent to the Internal Revenue Service (IRS) as well.

#### **CIVIL RIGHTS REQUIREMENTS**

Pursuant to Chapter 760 F.S., Company is committed to compliance with civil rights requirements. As applicable to operation of the nurse registry, Company complies with the provisions of Florida statutes concerning civil rights and anti-discrimination laws.

Company is an equal employment opportunity employer that adheres to a policy of making employment and contract decisions without regard to race, color, sex, religion, national origin, handicap, marital status, or any other legally protected status. The nurse registry will comply, at all times, with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all requirements imposed pursuant thereto, to the end that no person shall be discriminated against. Contractor's opportunity to contract with Company depends solely upon his/her qualifications and ability to perform the assigned job duties. Company's non-discrimination policy applies to clients, healthcare providers, and all personnel and independent contractors.

#### **RELATIONSHIP BETWEEN PARTIES**

Contractor is retained and contracting with Company only for the purposes and to the extent set forth in this Agreement and corresponding job description, and his/her relation to the Company and its subsidiary companies shall, during the period or periods of providing services hereunder, be that of an independent contractor. Contractor shall not be considered as being entitled to participate in any plans, arrangements, or distribution by the Company or its subsidiary companies pertaining to or in connection with any pension, stock, bonus, profit-sharing or similar benefits for their regular independent contractors.

These parties acknowledge that neither Contractor nor Company, or any of their affiliates (including, without limitation, principals, employees, agents, and executive officers, if any) shall be deemed hereunder joint ventures, principals, partners, employees or agents of other party hereto, provided all of the duties, obligations and responsibilities of Contractor, and all activities with respect to the satisfaction of the foregoing, shall be conducted by Contractor of the foregoing, shall be conducted by Contractor independent of Company as an independent contractor. Contractor shall indemnify and hold the Company harmless from any and all claims of every kind and description whatsoever asserted against Company arising out of the performance by Contractor in his/her duties, obligations and responsibilities hereunder. Notwithstanding anything contained herein, Contractor shall not be permitted to delegate any of Contractor's duties hereunder to any employee, agent or other person without the written consent of Company. Contractor shall have general control of Contractor's activities with the right to exercise independent good judgment as to the manner (but only as permitted hereunder) of servicing clients, customers and otherwise carrying out the provisions of this Agreement. In acting as an independent contractor hereunder, Contractor shall be required to make arrangements for insurance, licenses and permits and for the payment of income taxes and social security taxes with regard to any payments received by Contractor and Contractor's services.

Contractor agrees and acknowledges that it will promptly notify Company, in writing, of any inquiries, investigations, complaints, and any disciplinary actions taken by any entity based on Contractor's actions and inactions. Contractor hereby authorizes any entity regulating or supervising Contractor to release to Company all information relating to such complaint or disciplinary action. Contractor also agrees to provide Company access, upon request, to Contractor's books, documents and records to verify the costs and reasonableness of the services furnished.

#### **PAYMENT FOR SERVICES**

Both Company and Contractor agree that the Contractor shall be paid according to the attached, Appendix A. Contractor will submit to Company accurate and complete records of services provided and will be paid every other Friday only if services were provided by Contractor, conditions for payment were met, and payment is due. Documentation pertaining to the services provided must be complete per nurse registry policy, accurately reflect services provided, and be turned into the nurse registry in a timely manner. Contractor acknowledges that payment for services may be withheld if all conditions regarding services and documentation of service provision have not been met in accordance with registry policy. Both Company and Contractor agree not to charge any client for covered services and items and to return money incorrectly collected.

Contractor shall not be entitled to any other compensation, and Contractor shall not be entitled to receive any reimbursements for any costs or expenses incurred by Contractor. In connection with services provided, Contractor shall prepare and provide Company, as may be reasonably requested, all reasonable documentation of such services in order that Company, or any other entity designated by Company, any comply with appropriate Federal and State laws with respect to the reimbursement of Company, or such other entity, of the payments by Company to Contractor as compensation.

#### **BACKGROUND SCREENING**

All Contractors referred for assignments by nurse registries shall meet state of Florida background screening requirements.

Company must either terminate the employment or contract of any of its personnel found to be in noncompliance with the minimum standards for good moral character contained in this section or place Contractor in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07. Any person who is required to undergo screening and who refuses to cooperate in such screening or refuses to submit the information necessary to complete the screening, including fingerprints when required, shall be disqualified for employment or contract in such position or, if employed, shall be dismissed.

#### **PROFESSIONAL RESPONSIBILITY**

Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by Contractor in accordance with his/her independent and professional judgment. This Agreement shall be subject to the rules and regulations of any and all professional organizations or associations to which Contractor may from time to time belong and the laws and regulations governing said practice in this State.

Contractor shall be responsible for obtaining and maintaining appropriate levels of professional liability insurance if applicable to cover Contractor's performance hereunder. Contractor is required to provide Company a valid Certificate of Insurance reflecting professional liability insurance coverage immediately upon the request of Company. In addition, Contractor is required to maintain automobile liability and personal injury protection insurance and shall provide proof of such insurance to Company in the event that a personal vehicle is utilized for transportation and whenever requested by Company. Contractor must immediately notify Company if Contractor's professional liability, automobile or PIP insurance is terminated, expires or is reduced, whether the insurance company or Contractor initiated such action.

Both parties agree that Contractor shall submit clinical notes and progress notes to the Administrator of the registry or designee weekly (for services provided in the week prior), and shall conform to the prescribed scheduling of visits and periodic client evaluation. All clients' health information must be maintained according to federal privacy law ('HIPAA') requirements.

Both parties agree that the Company shall request the evaluation of the Contractor's performance on an annual basis. It is an expectation of the nurse registry that Contractor will be competent to perform his/her responsibilities in a safe manner and that skills and education acquired elsewhere transfer competently into a client care setting.

#### **COVENANT NOT TO COMPETE**

During the term of this Agreement and for a period of at least one year thereafter, Contractor shall not contact a Company client, directly or indirectly, either for his/her own account or otherwise; to be employed by, participate in, consult with, perform services for, or otherwise be connected with any business the same as or similar to the business conducted by Company. Contractor agrees to notify Company in the event that a nurse registry client attempts to arrange for services directly with Contractor. Contractor agrees not to accept assignment from any client of the Company for a period of at least one year following Contractor's separation from Company and/or termination of this Agreement. In the event any of the provisions of this section are determined to be invalid by reason of their scope or duration, this section shall be deemed modified to the extent required to cure the invalidity.

In the event of a breach, a threatened breach, and failure to comply with this section, Company shall be entitled to obtain an injunction restraining the commitments or continuance of the breach, as well as any other legal or equitable remedies as permitted by law.

All statistical, financial and personal data relating to the client which is confidential and which is clearly designated as such will be kept in the strictest of confidence by Contractor and Company. Accordingly, Contractor agrees not to compete with Company for those clients and legal entities Contractor has serviced under this Agreement. Contractor acknowledges and agrees that information concerning the clients, suppliers, office files, procedures and policies and other aspects of the business of the Company is confidential, and in connection therewith, Contractor agrees not to use or disclose any such information at anytime except as permitted under or as otherwise permitted in writing by the Company. Contractor agrees to immediately surrender all such information in the possession or control of Contractor, including all reproductions thereof, upon any termination of this Agreement. Contractor hereby agrees and acknowledges that: (i) This section and each of its provisions are reasonable as they relate to restrictions and limitations upon Contractor; (ii) Neither this Agreement nor this section will operate as a bar to Contractor's sole means of support; (iii) This section may be enforced by Company through the use of an injunction or any other equitable remedy given in the amount of the damages to Company for a breach of this section, in addition to any other remedies Company may have hereunder or under law; (iv) Company shall be entitled to reimbursement from Contractor's legal fees, costs and expenses incurred by Company through all appeals, if any, to enforce this section; (v) This section shall survive any termination of this Agreement; (vi) If any provisions of this section is deemed unenforceable by a court of competent jurisdiction for whatever reason, such term shall be substituted with such term of immediately lesser duration or effect which shall be deemed enforceable.

#### **SUSPENSION AND TERMINATION**

This Agreement shall commence as of the date first written below and shall continue for successive one (1) year terms, unless sooner terminated as follows: (i) This Agreement can be terminated by either party hereto upon thirty (30) days written notice prior to the commencement of the successive one (1) year period; (ii) This Agreement may be terminated by Company at any time without notice in the event Contractor breaches any covenant or representation under this Agreement; (iv) This Agreement may be terminated at any time upon mutual written consent of the parties.

#### **THIRD PARTY BENEFICIARIES**

This Agreement has been entered into solely for the benefit of the parties hereto and in no event whatsoever shall any other party or parties be deemed a third party beneficiary or beneficiaries of the Agreement.

#### **MISCELLANEOUS**

Florida law shall govern this Agreement, with the sole venue for any action, suit or proceeding arising hereunder Palm Beach County, Florida. No amendment to or assignment of this Agreement will be valid unless in writing and signed by the parties signing below. This Agreement may not be waived unless such waiver in writing and signed by the waiving party. Each party acknowledges having been represented by independent legal counsel in connection with this Agreement or having waived such right. This Agreement sets forth the entire Agreement of the parties as to the subject hereto and supersedes any prior Agreement. Each party will execute such reasonable documents and take such reasonable action as may be reasonably requested to give effect to this Agreement. All costs and expenses of the parties in connection with this Agreement shall be borne by each such party incurring such costs and expenses. This Agreement may be executed in any number of counterparts.

**ENTIRE AGREEMENT**

The Agreement (including any attachments and amendments hereto) constitute the entire understanding between the parties hereto and cancels and supersedes all prior negotiations, understandings and agreements, either written or oral, with respect to the subject matter hereof.

Agreement executed as of this day 5.3.21

ALL VIP CARE, INC.

Yanariz Perez  
Signature of Authorized Company Representative

Name: Yanariz Perez

Title: Front Desk

Date: 5/4/21

Independent Contractor:

CRUZ Daicelys Valderriso  
Signature of Contractor

Name: CRUZ Daicelys Valderriso

Title: HHHA

Date: 5.3.21

# APPENDIX A: INDEPENDENT CONTRACTOR PAYMENT SCHEDULE

## PRIVATE CLIENT HOME—PER VISIT RATE:

	Sign Up/Initial Evaluation Visit	Regular Client Visit	Recertification/ Re-assessment or Discharge
RN			
LPN			

## REFERRAL TO FACILITY, AGENCY, OR HEALTHCARE ENTITY—PER VISIT RATE:

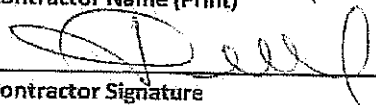
	Sign Up/Initial Evaluation Visit	Regular Client Visit	Recertification/ Re-assessment or Discharge
RN			
LPN			

## CLIENT VISITS TO PROVIDE SERVICES—PER HOUR RATE:

	Private Client Home	Referral to Facility, Agency, or Healthcare Entity
HHA/CNA		
Homemaker/Companion		

ORVZ Daicels VALDIVIA SO  
Contractor Name (Print)

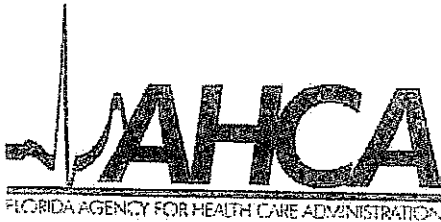
5-3-21  
Date

  
Contractor Signature

5-3-21  
Date

Yanayiz Perez  
Administrator/Designee Signature

5/4/21  
Date



## AFFIDAVIT OF COMPLIANCE WITH Background Screening Requirements

**Authority:** This form may be used by all employees to comply with:

- the attestation requirements of section 435.05(2), Florida Statutes, which state that every employee required to undergo Level 2 background screening must attest, subject to penalty of perjury, to meeting the requirements for qualifying for employment pursuant to this chapter and agreeing to inform the employer immediately if arrested for any of the disqualifying offenses while employed by the employer; AND
- the proof of screening within the previous 5 years in section 408.809(2), Florida Statutes which requires proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any provider or professional licensure requirements of the Agency, the Department of Health, the Agency for Persons with Disabilities, the Department of Children and Family Services, or the Department of Financial Services for an applicant for a certificate of authority or provisional certificate of authority to operate a continuing care retirement community under chapter 651 if the person has not been unemployed for more than 90 days.

*This form must be maintained in the employee's personnel file. If this form is used as proof of screening for an administrator or chief financial officer to satisfy the requirements of an application for a health care provider license, please attach a copy of the screening results and submit with the licensure application.*

Employee/Contractor Name:	CRUZ DAPOELYS VALDIVIAO
Health Care Provider/ Employer Name:	
Address of Health Care Provider:	

I hereby attest to meeting the requirements for employment and that I have not been arrested for or been found guilty of, regardless of adjudication, or entered a plea of nolo contendere, or guilty to any offense, or have an arrest awaiting a final disposition prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

(f) Section 782.071, relating to vehicular homicide.

**Criminal offenses found in section 435.04, F.S**

(g) Section 782.09, relating to killing of an unborn quick child by injury to the mother.

(a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

(h) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(i) Section 784.011, relating to assault, if the victim of the offense was a minor.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(j) Section 784.03, relating to battery, if the victim of the offense was a minor.

(d) Section 782.04, relating to murder.

(k) Section 787.01, relating to kidnapping.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.

(l) Section 787.02, relating to false imprisonment.

(m) Section 787.025, relating to luring or enticing a child.

- (n) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (o) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- (p) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (q) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (r) Section 794.011, relating to sexual battery.
- (s) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (t) Section 794.05, relating to unlawful sexual activity with certain minors.
- (u) Chapter 796, relating to prostitution.
- (v) Section 798.02, relating to lewd and lascivious behavior.
- (w) Chapter 800, relating to lewdness and indecent exposure.
- (x) Section 806.01, relating to arson.
- (y) Section 810.02, relating to burglary.
- (z) Section 810.14, relating to voyeurism, if the offense is a felony.
- (aa) Section 810.145, relating to video voyeurism, if the offense is a felony.
- (bb) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (cc) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (dd) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (ee) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (ff) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (gg) Section 826.04, relating to incest.
- (hh) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (ii) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (jj) Former s. 827.05, relating to negligent treatment of children.
- (kk) Section 827.071, relating to sexual performance by a child.
- (ll) Section 843.01, relating to resisting arrest with violence.
- (mm) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- (nn) Section 843.12, relating to aiding in an escape. (oo)(ll).
- (oo) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- (pp) Chapter 847, relating to obscene literature.
- (qq) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
- (rr) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- (ss) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (tt) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- (uu) Section 944.40, relating to escape.
- (vv) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- (ww) Section 944.47, relating to introduction of contraband into a correctional facility.
- (xx) Section 985.701, relating to sexual misconduct in juvenile justice programs.
- (yy) Section 985.711, relating to contraband introduced into detention facilities.
- (3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of not contentendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

**Criminal offenses found in section 408.809(4), F.S.**

- (a) Any authorizing statutes, if the offense was a felony.
- (b) This chapter, if the offense was a felony.
- (c) Section 409.920, relating to Medicaid provider fraud.
- (d) Section 409.9201, relating to Medicaid fraud.
- (e) Section 741.28, relating to domestic violence.
- (f) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- (g) Section 817.234, relating to false and fraudulent insurance claims.
- (h) Section 817.505, relating to patient brokering.
- (i) Section 817.568, relating to criminal use of personal identification information.
- (j) Section 817.60, relating to obtaining a credit card through fraudulent means.
- (k) Section 817.61, relating to fraudulent use of credit cards, if the offense was a felony.
- (l) Section 831.01, relating to forgery.
- (m) Section 831.02, relating to uttering forged instruments.
- (n) Section 831.07, relating to forging bank bills, checks, drafts, or promissory notes.
- (o) Section 831.09, relating to uttering forged bank bills, checks, drafts, or promissory notes.
- (p) Section 831.30, relating to fraud in obtaining medicinal drugs.
- (q) Section 831.31, relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

If you are also using this form to provide evidence of prior Level 2 screening (fingerprinting) in the last 5 years and have not been unemployed for more than 90 days, please provide the following information. **A copy of the prior screening results must be attached.**

Purpose of Prior Screening: \_\_\_\_\_

Screened conducted by: \_\_\_\_\_

Date of Prior Screening: \_\_\_\_\_

- ☐ Agency for Health Care Administration  
☐ Department of Health  
☐ Agency for Persons with Disabilities  
☐ Department of Children and Family Services  
☐ Department of Financial Services

**Affidavit**

Under penalty of perjury, I, \_\_\_\_\_, hereby swear or affirm that I meet the requirements for qualifying for employment in regards to the background screening standards set forth in Chapter 435 and section 408.809, F.S. In addition, I agree to immediately inform my employer if arrested or convicted of any of the disqualifying offenses while employed by any health care provider licensed pursuant to Chapter 408, Part II F.S.

  
Employee/Contractor Signature

  
Title

5-3-21  
Date

Form **W-9**  
(Rev. December 2014)  
Department of the Treasury  
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**ARUZ POICEHS MAID VILSO**

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only one of the following seven boxes:  
☐ Individual/sole proprietor or single-member LLC  
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) **>**  
 Note: For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.  
☐ Other (see instructions) **>**  
☐ C Corporation  
☐ S Corporation  
☐ Partnership  
☐ Trust/estate

4 Exemptions (codes apply only to certain entities; not individuals; see instructions on page 3):  
 Exempt payee code (if any):  
 Exemption from FATCA reporting code (if any):  
 (Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)  
**[REDACTED]**

6 City, state, and ZIP code  
**[REDACTED]**

7 List account number(s) here (optional)

Requester's name and address (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note: If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number
<b>[REDACTED]</b>
or
Employer identification number
<b>[REDACTED]</b>

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here Signature of U.S. person **[Signature]** Date **5.3.21**

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/w9](http://www.irs.gov/w9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third-party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien); to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or:
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Cat. No. 10231X

Form **W-9** (Rev. 12-2014)

## HOME HEALTH AIDE/CERTIFIED NURSING ASSISTANT JOB DESCRIPTION

REPORTS TO Administrator

### QUALIFICATIONS

- Licensed by the Florida Department of Health as a Certified Nursing Assistant, or for home health aides, documentation of successful completion of at least forty hours of training (content must be consistent with Florida regulations specific to home health aide training).
- Individuals who earn their CNA certificate in another state must contact the Florida Certified Nursing Assistant office at the Department of Health to inquire about taking the written examination prior to working as a CNA in Florida.
- Registered nurses and licensed practical nurses who can show proof they are licensed in another state or in Florida can work as a home health aide in Florida.
- Home health aides who complete their training in another state must provide a copy of the course work and a copy of their training documentation to the nurse registry. If the course work is equivalent to Florida's requirements, the nurse registry may refer the home health aide for contract.
- Current CPR certification.
- Evidence of continuing education as required.
- One (1) year experience preferred.

### PRIMARY RESPONSIBILITIES (including but not limited to the following):

- Fulfills assignments delegated by the nurse registry and provides services in accordance with a client's service provision plan.
- Meets all contractual obligations on an ongoing basis.
- Performs all personal care activities contained in a written assignment by a licensed health professional employee or contractor of the home health nurse registry and which includes assisting the client with personal hygiene, ambulation, eating, dressing, shaving, physical transfer, and other duties as assigned.
- Provides assistance with ambulation, limited to providing physical support to enable the client to move about within or outside of the client's place of residence. Physical support includes holding the client's hand, elbow, under the arm, or holding on to a support belt worn by the client to assist in providing stability or direction while the client ambulates.
- Provides assistance with bathing, limited to helping the client in and out of the bathtub or shower, adjusting water temperatures, washing and drying portions of the body which are difficult for the client to reach, and being available while the client is bathing. Can also include washing and drying the client who is bed-bound.
- Provides assistance with dressing, to include helping the client put on and remove clothing.
- Helps the client with shaving and with oral, hair, skin and nail care. (Nail trimming not allowed).
- Assists with toileting, including reminding the client about using the toilet, assisting to the bathroom, helping to undress, positioning on the commode, and helping with related personal hygiene, including assistance with changing of an adult brief. Also includes assisting with positioning the client on the bedpan and helping with related personal hygiene.
- Provides assistance with physical transfer. Providing verbal and physical cueing; physical assistance, or both while the client moves from one position to another, for example between the following: a bed, chair, wheelchair, commode, bathtub or shower, or a standing position. Transfer can also include use of a mechanical lift, if a home health aide or CNA is trained in its

- use.
- Maintains a clean, safe and healthy environment, which may include light cleaning and straightening of the bathroom, straightening the sleeping and living areas, washing the client's dishes or laundry, and such tasks to maintain cleanliness and safety for the client.
- Responsible for observing appearance and gross behavioral changes in the client and reporting these changes to the caregiver and the nurse registry or the registered nurse responsible for assessing the case when giving care in the home or to the responsible facility employee if staffing in a facility.
- Documents services provided to the client or client and for filing said documentation with the nurse registry on a regular basis.
- Performs other activities as taught and documented by a registered nurse, concerning activities for a specific client and restricted to the following:
  - Assisting with the change of a colostomy bag, reinforcement of dressing;
  - Assisting with the use of devices for aid to daily living such as a wheelchair or walker;
  - Assisting with prescribed range of motion exercises;
  - Assisting with prescribed ice cap or collar;
  - Doing simple urine tests for sugar, acetone or albumin;
  - Measuring and preparing special diets;
  - Teaching household routine and skills to well members of the family;
  - Measuring intake and output of fluids;
  - Measuring temperature, pulse, respiration or blood pressure;
  - Keeping records of personal health care activities;
  - Assisting with ADL's and IADL's;
  - Providing nutritional support.
- Provides assistance with a client's self-administration of medication, including the following:
  - Taking the medication in its previously dispensed, properly labeled container, from where it is stored and bringing it to the client.
  - In the presence of the client, reading the label, opening the container, removing a prescribed amount of medication from the container, and closing the container.
  - Placing an oral dosage in the client's hand or placing the dosage in another container and helping the client by lifting the container to his or her mouth.
  - Applying topical medications.
  - Returning the medication container to proper storage.
  - Keeping a record of when a client receives assistance with self-administration of medication.
- Assistance with a client's self-administration of medication does not include the following:
  - Mixing, compounding, converting, or calculating medication doses, except for measuring a prescribed amount of liquid doses, except for measuring a prescribed amount of liquid medication or breaking a scored tablet or crushing a tablet as prescribed.
  - The preparation of syringes for injection or the administration of medications by injectable route.
  - Administration of medications through intermittent positive pressure breathing machines or a nebulizer.
  - Administration of medications by way of a tube inserted in a cavity of the body. (e)
  - Administration of parenteral preparations.
  - Irrigations for debriding agents used in the treatment of a skin condition.
  - Rectal, urethral, or vaginal preparations.

- Medications ordered by the physician or health care professional with prescriptive authority to be given "as needed", unless the order is written with specific parameters that preclude independent judgment on the part of the unlicensed person, and at the request of a competent client.
- Medication for which the time of administration, the amount, the strength of dosage, the method of administration, or the reason for administration requires judgment or discretion on the part of the unlicensed person.
- The home health aide and CNA may also provide the following assistance with self-administered medication, as needed by the client:
  - Prepare necessary items such as juice, water, cups, or spoons to assist the client in the self-administration of medication;
  - Open and close the medication container or tear the foil of prepackaged medications;
  - Assist the resident in the self-administration process. Examples of such assistance include the steadying of the arm, hand, or other parts of the client's body so as to allow the self-administration of medication;
  - Assist the client by placing unused doses of solid medication back into the medication container.
- The home health aide or CNA may not change sterile dressings, irrigate body cavities such as giving an enema, irrigate a colostomy or wound, perform a gastric irrigation or enteral feeding, catheterize a client, administer medication, apply heat by any method, care for a tracheotomy tube, nor provide any personal health service which has not been included in the service provision plan.
- Adheres to standard precautions.
- Additional duties as assigned.
- Abides by the registry's Code of Conduct.
- Maintains client confidentiality per registry policy and federal privacy laws regarding the use and disclosure of client's protected health information.

By my signature below, I acknowledge and accept the responsibilities of this position.

Signature

Date 5.3.21

I, \_\_\_\_\_, have chosen not to carry a professional liability insurance policy while working as an independent contractor for the registry, I agree to hold harmless and indemnify ALL VIP CARE, INC. from any and all claims made against me in the course of performing the professional responsibilities assigned to me while under contract with the organizations or clients to which I am referred to provide services. I understand the potential consequences of not carrying a professional liability insurance policy and agree to notify registry management if I decide to carry a policy in the future.



All VIP Care, Inc.  
"Home Care Begins Here!"

### INDEPENDENT CONTRACTOR PROFESSIONAL LIABILITY POLICY

Effective immediately, Independent Contractors on the Agency's roster must carry "Professional Liability." In addition, the Professional Liability must include All VIP Care, Inc. as an additional insured.

The Independent Contractor can call CM&F Group, Inc. at 212/233-8911 to inquire about obtaining a policy and request to add All VIP Care, Inc. as an "Additional Insured." The Independent Contractor has the right to choose their insurance provider.

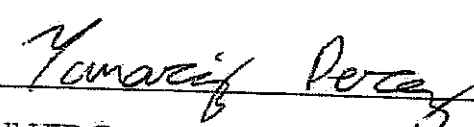
If the Independent Contractor wants the Agency to purchase the policy, then the contractor must sign this form.

By signing below, I, BRUCE DELOACH, M.D., M.P.H., will carry Professional Liability which is to include All VIP Care, Inc. as an additional insured; and, I will contact the Agency when the policy has expired and/or about to renew.

Furthermore, if the Agency purchases the policy on my behalf, I understand and agree that the cost will be deducted from my first pay-check.

★ 

Independent Contractor Signature



All VIP Care, Inc. Representative

C: File

New Policy Effective March 17, 2021

5601 Corporate Way #104  
W. Palm Beach, FL 33407



(561) 268-2581 (Office)  
(561) 847-4612 (Fax)  
www.allvipcare.com

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA  
3 CASE NO. 0:22-CV-61553-WPD  
4

5 CRUZ VALDIVIESO FIGUERA,  
6 Plaintiff,

7 vs.

8 ALL VIP CARE, INC., & LIZ  
9 VELAZQUEZ MCKINNON,  
10 Defendants.  
11 \_\_\_\_\_/

12 DEPOSITION OF CRUZ DAICELIS VALDIVIESO FIGUERA  
13 (Videoconference)  
14

15 June 6, 2023  
16 11:01 a.m.  
17  
18  
19  
20

21 Stenographically Reported By:  
22 HALEY DAWN WESTRA, RPR, CRR  
23 Reporter and Notary Public  
24 BAILEY ENTIN REPORTING, LLC  
25 Fort Lauderdale Office  
Phone - 954-745-9511



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2  
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9 On behalf of the Defendants:

10 FAIRLAW FIRM  
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15  
16 Also Present: Ms. Katherine Klejman, Interpreter  
17  
18  
19  
20  
21  
22  
23  
24  
25

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1 The following videoconference Zoom deposition  
2 was taken before HALEY DAWN WESTRA, Stenographic  
3 Reporter, in and for the State of Florida at Large,  
4 in the above cause.  
5  
6  
7 KATHERINE KLEJMAN,  
8 an interpreter herein, having been first duly sworn  
9 by the Certified Reporter to translate from English  
10 to Spanish and Spanish to English to the best of  
11 their ability translated as follows:  
12  
13 CRUZ DAICELIS VALDIVIESO FIGUERA,  
14 a witness herein, having been first duly sworn by the  
15 Certified Reporter to speak the truth and nothing but  
16 the truth, was examined and testified as follows:  
17  
18 EXAMINATION  
19 BY MR. GOLDBERG:  
20 Q. Good morning, Cruz. My name is Randy  
21 Goldberg, and I represent All VIP Care and Liz  
22 McKinnon.  
23 Today is your deposition regarding this  
24 lawsuit that you filed against All VIP Care.  
25 A. Okay.

Page 5

1 Q. And we have a court reporter here -- I'm  
2 sorry.  
3 We have a court reporter here who is going  
4 to take down your testimony, so it's important that  
5 every answer you give be verbal, such as "yes," "no,"  
6 or whatever the response is. She cannot take down  
7 body movements or motions.  
8 A. Okay.  
9 Q. Thank you.  
10 Are you under any medication or alcoholic  
11 beverages or any drugs that would prevent you from  
12 giving your deposition today?  
13 A. No.  
14 Q. If at any time during the deposition today  
15 you need to take a break, a restroom break, or for  
16 whatever reason, we will be happy to temporarily  
17 adjourn the deposition to allow you to take such a  
18 break. Okay?  
19 A. Okay.  
20 Q. The only condition I would ask is that a  
21 break not be taken in between a question being asked  
22 and you providing your answer.  
23 We would just ask that a question be asked  
24 and answered before a break is taken. Okay?  
25 A. Okay.

Page 6

1 Q. If at any time I ask you a question that you  
2 do not understand or is confusing to you, I want you  
3 to please ask me to restate the question, and I will  
4 be happy to. Okay?  
5 A. Okay.  
6 Q. For the record, what is your full name?  
7 A. For the record, Cruz Daicelis Valdivieso.  
8 Cruz Valdivieso.  
9 Q. And what about the name Figuera?  
10 A. Figuera is my second last name.  
11 Q. Okay. But that's part of your formal name;  
12 correct?  
13 A. Yes, correct.  
14 Q. As we discussed earlier, and you had no  
15 objection to it, I'm going to just refer to you as  
16 Cruz today; is that okay?  
17 A. Perfect.  
18 Q. Are you known by any nicknames?  
19 A. Daisy.  
20 Q. Thank you for that.  
21 Where do you currently reside?  
22 A. I live right now at Day & Davie,  
23 3670 Southwest 60th Avenue, Apartment No. 2, Davie,  
24 Florida 33314.  
25 Q. And when did you graduate high school?

Page 7

1 A. I didn't graduate. I didn't finish high  
2 school.

3 **Q. What is your cell phone number?**

4 A. [REDACTED]

5 **Q. And who is your cell phone provider?**

6 A. T-Mobile.

7 **Q. And what is your email address?**

8 A. [REDACTED]  
9 da [REDACTED]

10 **Q. Thank you.**

11 **Do you have a personal website?**

12 A. No.

13 **Q. Are you presently married?**

14 A. Yes.

15 **Q. And do you have any children?**

16 A. Yes.

17 **Q. Have you ever been convicted of a crime**  
18 **since you turned 18 years of age?**

19 A. Never.

20 **Q. Are you a party to any other litigation at**  
21 **this time?**

22 A. Sorry. I didn't understand the question.

23 **Q. Are you a plaintiff or a defendant in any**  
24 **other lawsuit that is going on at this time?**

25 A. No.

Page 8

1 **Q. Have you ever been a party to any other**  
2 **lawsuit about besides current lawsuit?**

3 A. Yes.

4 **Q. And what was that lawsuit?**

5 A. It was an accident at a park.

6 **Q. So aside from this accident in a park, were**  
7 **there any other lawsuits that you've been a party to?**

8 A. No.

9 **Q. Are you -- have you ever been a party to any**  
10 **administrative complaints or filings with any**  
11 **governmental agency?**

12 A. No.

13 **Q. Have you ever filed any workers'**  
14 **compensation claims?**

15 A. No.

16 **Q. Are you currently employed?**

17 A. Yes.

18 **Q. And who are you currently employed with?**

19 A. With Sininani, S-I-N-I-N-A-N-I.

20 **Q. Sininani?**

21 A. The agency is called Sininani.

22 MR. GOLDBERG: Okay. Can you spell that for  
23 me? I didn't catch that, Madam Interpreter.

24 THE VIDEOGRAPHER: Yes. The way I caught  
25 it...

Page 9

1 THE WITNESS: S-I-N-I-N-A-N-I.

2 BY MR. GOLDBERG:

3 **Q. And what does this company do?**

4 A. This company takes care of people with  
5 disabilities.

6 **Q. Okay. Is Ms. Cruz reading these answers off**  
7 **of some document in front of her?**

8 A. No. I have a paper where I'm writing down  
9 how to spell things.

10 **Q. I appreciate that. Thank you for clarifying**  
11 **that.**

12 **What role do you serve with Sininani?**

13 A. My job is a caretaker.

14 **Q. Are you working as a home health aide?**

15 A. Yes.

16 **Q. Do you own a business?**

17 A. No.

18 **Q. Do you work for yourself?**

19 A. I'm an independent contractor.

20 **Q. And what does an independent contractor mean**  
21 **to you, Cruz?**

22 A. That I make my own schedule.

23 **Q. What else?**

24 MR. CUMMINGS: Objection to form.

25 THE WITNESS: I didn't understand the

Page 10

1 question.

2 BY MR. GOLDBERG:

3 **Q. Understood.**

4 **You stated that you work as an independent**  
5 **contractor for Sininani. Am I correct in that?**

6 A. Yes.

7 **Q. And what does it mean by you being an**  
8 **independent contractor with Sininani?**

9 MR. CUMMINGS: Objection to form.

10 THE WITNESS: I am an independent worker,  
11 and I make -- I create my own schedule. I decide if  
12 I can work or I can't work that day.

13 BY MR. GOLDBERG:

14 **Q. Who decided your salary with Sininani?**

15 A. They place the salary, and then if it's  
16 convenient for me, then I take it.

17 **Q. Understood. Thank you.**

18 **Do you have a written contract with**  
19 **Sininani?**

20 A. Yes.

21 **Q. Are you a member of any professional**  
22 **associations or clubs?**

23 A. No.

24 **Q. Do you have a Facebook account?**

25 A. Yes.

1 **Q. And what is your Facebook name or handle?**  
2 A. My Facebook name is Daicelis.  
3 **Q. Can you spell --**  
4 A. And my username I forgot.  
5 **Q. Okay. Can you spell Daicelis for me,**  
6 **please?**  
7 A. D-A-I-C-L-I-S [sic].  
8 **Q. D-A-I --**  
9 MR. GOLDBERG: The rest of it, Madam  
10 Interpreter?  
11 THE INTERPRETER: Yeah. So she -- there's a  
12 missing letter there, but I have it from the  
13 beginning.  
14 It's D-A-I-C-E-L-I-S.  
15 MR. GOLDBERG: Thank you for that.  
16 BY MR. GOLDBERG:  
17 **Q. What about Twitter account?**  
18 A. No, I don't have a Twitter account.  
19 **Q. A neighborhood app account?**  
20 A. No.  
21 **Q. Instagram?**  
22 A. I have it, but I don't use it.  
23 **Q. What is her handle on Instagram?**  
24 A. I forgot.  
25 **Q. What about TikTok?**

1 A. No.  
2 **Q. Okay. How are you -- well, strike that.**  
3 **Besides Sininani and All VIP, have you**  
4 **worked as a home health aide for any other agency?**  
5 A. No.  
6 **Q. When you were working with All VIP --**  
7 MR. GOLDBERG: And just for clarification,  
8 I'm just going to refer to "All VIP Care" as "VIP,"  
9 if that's okay with you, Mr. Cummings?  
10 MR. CUMMINGS: Yeah. No -- excuse me.  
11 No objection to that.  
12 MR. GOLDBERG: Thank you.  
13 BY MR. GOLDBERG:  
14 **Q. When you were working for VIP, were you**  
15 **working for any other nurse registries?**  
16 A. No.  
17 **Q. So the only time that you've worked as a**  
18 **home health aide has been VIP and/or Sininani; is**  
19 **that correct?**  
20 A. Yes.  
21 **Q. Thank you.**  
22 **Is Sininani a nurse registry?**  
23 A. I don't know.  
24 **Q. You are licensed as a home health aide with**  
25 **the state of Florida; correct?**

1 A. Yes.  
2 **Q. What about as a certified nursing assistant?**  
3 **Are you certified with the state of Florida?**  
4 A. Yes.  
5 **Q. Do you hold any other certifications from**  
6 **the state of Florida or licenses?**  
7 MR. GOLDBERG: I'm sorry. Madam  
8 Interpreter.  
9 THE INTERPRETER: No, no. I caught that.  
10 I'm sorry.  
11 THE WITNESS: No, just that.  
12 MR. CUMMINGS: I apologize, Mr. Goldberg.  
13 Your second question before was, was she  
14 licensed as a certified nursing assistant?  
15 MR. GOLDBERG: Yes, sir.  
16 MR. CUMMINGS: Okay. Thank you.  
17 MR. GOLDBERG: Are we good, Mr. Cummings?  
18 MR. CUMMINGS: Yeah, I didn't know if  
19 I caught the exact terminology. I just wanted to  
20 make sure. That's fine. Thanks.  
21 MR. GOLDBERG: No, no. Good. I want to  
22 make sure we're all on the same page here.  
23 THE WITNESS: Okay.  
24 BY MR. GOLDBERG:  
25 **Q. Cruz, do you know what a nurse registry is?**

1 A. Yes.  
2 **Q. Okay. What is a nurse registry?**  
3 A. It's a registry in which you register with  
4 the state as, in this case, Sininani to be an  
5 auxiliary for a nurse or a nurse.  
6 **Q. Your testimony now is that Sininani is a**  
7 **nurse registry?**  
8 A. Yes. In the beginning, when you asked me if  
9 Sininani was a nurse registry, I was a bit confused,  
10 but yes.  
11 **Q. No problem. That's why I want to clarify.**  
12 **I don't want any confusion.**  
13 **Do you know if VIP is a nurse registry?**  
14 A. I started working for VIP as a caretaker or  
15 aide, and I had an HHA license, which is you get  
16 certified by a school as a nurse aide.  
17 **Q. Okay. Now, for clarification, you're using**  
18 **the term "caretaker," and then we're using the term**  
19 **"HHA," which I believe, Cruz, means "home health**  
20 **aide"; is that correct?**  
21 THE INTERPRETER: Yeah, let me clarify  
22 because when I hear the word in Spanish --  
23 interpreter clarifying here -- when I hear the word  
24 "cuidadora" is -- I'm taking it as caretaker. I'm  
25 not --

<p>Page 15</p> <p>1 MR. GOLDBERG: Okay.</p> <p>2 THE INTERPRETER: It could be "aide"; it</p> <p>3 could be "caretaker," but let me double-check that</p> <p>4 with the witness. One second.</p> <p>5 MR. GOLDBERG: Please do, ma'am.</p> <p>6 THE INTERPRETER: So because there's a mixup</p> <p>7 here on the words, I think it's best to just use</p> <p>8 "HHA," which is "home health aide," if that's okay</p> <p>9 because --</p> <p>10 MR. GOLDBERG: That is absolutely --</p> <p>11 THE INTERPRETER: -- there's a mixup on the</p> <p>12 Spanish words with "taking care" and being an</p> <p>13 assistant.</p> <p>14 So I think it'll -- for the record, it's</p> <p>15 going to be helpful that way.</p> <p>16 MR. GOLDBERG: Okay.</p> <p>17 MR. CUMMINGS: And I'm sorry. Just to</p> <p>18 clarify, Madam Interpreter.</p> <p>19 Did Ms. Cruz say that her use of the term --</p> <p>20 how do you pronounce cui- -- how do you pronounce it</p> <p>21 "cuidadora"?</p> <p>22 THE INTERPRETER: Yeah, so "cuidadora,"</p> <p>23 for me, and my brain just went to caretaker --</p> <p>24 MR. CUMMINGS: Caretaker?</p> <p>25 THE INTERPRETER: -- like taking care of</p>	<p>Page 17</p> <p>1 because it's becoming confusing, I think, for the</p> <p>2 record.</p> <p>3 MR. CUMMINGS: Okay.</p> <p>4 THE INTERPRETER: If that's okay. I don't</p> <p>5 know. I -- I --</p> <p>6 MR. CUMMINGS: Yeah, I mean, for our</p> <p>7 purposes, it does have a specific meaning, but I'm</p> <p>8 not -- you know, I'm going to let Mr. Goldberg</p> <p>9 conduct his deposition.</p> <p>10 I just wanted to know what she said because</p> <p>11 I wasn't sure if you were giving me a -- giving a</p> <p>12 direct translation of what my client said.</p> <p>13 THE INTERPRETER: Oh, yeah, I'm giving a</p> <p>14 direct translation, but if there's two different</p> <p>15 meanings to one word, which could happen sometimes in</p> <p>16 Spanish --</p> <p>17 MR. CUMMINGS: Right.</p> <p>18 THE INTERPRETER: -- I just want to make</p> <p>19 sure I pick the right word in English to use.</p> <p>20 MR. CUMMINGS: Okay. Understood.</p> <p>21 MR. GOLDBERG: Okay. I don't want to beat a</p> <p>22 dead horse by any stretch of the imagination, but</p> <p>23 Mr. Cummings is right. It's important that we</p> <p>24 understand that home health aide is what Ms. -- what</p> <p>25 Ms. Cruz is performing services as.</p>
<p>Page 16</p> <p>1 someone.</p> <p>2 But I know the medical -- like, we're</p> <p>3 getting specific with the terminology. I'm trying to</p> <p>4 keep it exactly to what it is.</p> <p>5 So now that I know HHA is home health aide,</p> <p>6 it's -- I mean, "aide" and "cuidadora" are both also</p> <p>7 the same word.</p> <p>8 MR. CUMMINGS: Got it.</p> <p>9 And when you asked her to clarify, what did</p> <p>10 she say?</p> <p>11 THE INTERPRETER: She said she doesn't know</p> <p>12 because she doesn't know English. She -- because I</p> <p>13 was saying, "In English, when they ask you, you know,</p> <p>14 like, how do you say it in English?"</p> <p>15 MR. CUMMINGS: Right.</p> <p>16 THE INTERPRETER: "Do you say 'caretaker' or</p> <p>17 do you said 'aide'?"</p> <p>18 And she said she doesn't know because she</p> <p>19 doesn't speak English.</p> <p>20 So I'm just trying to, yeah, keep it simple</p> <p>21 for all of us. So maybe just keep it as "aide."</p> <p>22 MR. CUMMINGS: Okay. Got it.</p> <p>23 So when she says "cuidadora," we're going to</p> <p>24 translate that to "aide" now?</p> <p>25 THE INTERPRETER: Yeah. I think it's easier</p>	<p>Page 18</p> <p>1 So when the term "caretaker" has been</p> <p>2 referenced, where we actually mean home health aide,</p> <p>3 or HHA, are we all in agreement with that?</p> <p>4 THE INTERPRETER: Yeah, let's --</p> <p>5 MR. CUMMINGS: So, I mean, I think for the</p> <p>6 purposes of the deposition, I don't care as much, but</p> <p>7 as a -- you know, as a legal term of art,</p> <p>8 Mr. Goldberg, you understand why I -- we understand</p> <p>9 why this is important.</p> <p>10 So I just don't want it to seem that she --</p> <p>11 and also I don't want to coach here if she's not --</p> <p>12 we're not translating, so I don't know if she</p> <p>13 understands what I'm saying.</p> <p>14 But I don't want it to -- I think maybe you</p> <p>15 have to ask more questions to see her understanding</p> <p>16 of it --</p> <p>17 MR. GOLDBERG: I --</p> <p>18 MR. CUMMINGS: -- is the legal definition,</p> <p>19 right.</p> <p>20 MR. GOLDBERG: I plan to ask a couple of</p> <p>21 qualifying questions.</p> <p>22 MR. CUMMINGS: Yeah, yeah. I figured.</p> <p>23 That's why I said I'm just going to let you conduct</p> <p>24 your deposition.</p> <p>25 I don't know if I'm prepared to say that</p>

1 when she uses the term "cuidadora" that that means  
2 "home health aide," though. That's like a legal  
3 definition.

4 I'm not prepared to say that. But if for  
5 the purposes of the deposition, fine, you know.

6 MR. GOLDBERG: Okay. Let me -- Madam  
7 Interpreter, I want to ask a couple of questions to  
8 qualify this is if I may.

9 THE INTERPRETER: Yeah.

10 BY MR. GOLDBERG:

11 Q. Ms. Cruz, you are a certified home health  
12 aide with the state of Florida; correct?

13 A. Yes.

14 Q. You are not a certified caretaker by the  
15 state of Florida, are you?

16 A. I don't understand the question.

17 Q. To the best of your knowledge, you do not  
18 have a certification from the state of Florida that  
19 certifies you as a, quote/unquote, "caretaker";  
20 correct?

21 A. Yes, I got a certification at a school, and  
22 I'm guessing that that school should be certified  
23 with the state of Florida.

24 Q. No, ma'am. I -- let me restate the  
25 question.

1 Cruz has a certification by the state of  
2 Florida as a home health aide; correct?

3 A. Yes.

4 Q. Ms. Cruz does not have a certification title  
5 as "caretaker"; correct?

6 A. My certification does say "taking care of"  
7 because that's what I do, is taking care of patients.

8 Q. But the certification is certifying Cruz as  
9 a home health aide; correct?

10 A. Yes.

11 Q. When the term "caretaker" has been used in  
12 this deposition up until this point, was Cruz meaning  
13 to state that she is a home health aide?

14 A. Yes.

15 Q. You were employed by VIP as a home health  
16 aide; correct?

17 A. Yes.

18 Q. And you are employed by Sininani as a home  
19 health aide correct?

20 A. Yes.

21 Q. All right. I think we got that clarified.

22 How does a nurse registry work, Ms. Cruz?

23 A. I don't know.

24 Q. What is the relationship, if you know,  
25 between a nurse registry and the registry's patients

1 or clients?

2 A. I don't know.

3 Q. What is the relationship between a nurse  
4 registry and home health aides, such as yourself,  
5 Ms. Cruz?

6 A. In the nurse registry, you're certified by  
7 the state. And as HHA, you did a course in order to  
8 work.

9 Q. And your relationship with the nurse  
10 registry is what?

11 A. The agency that I work with.

12 Q. I understand. Thank you.

13 What are your duties as a home health aide?

14 A. I do everything that is asked of me, mostly  
15 for the quality and betterment of patients. I take  
16 care of cleaning for them and giving them food.

17 Q. Who determines what your duties for a home  
18 health aide are for a patient or client?

19 A. When you're hired by the agency, you're  
20 given the different conditions under which the  
21 patient is founded.

22 So, for example, if the person has  
23 Alzheimer's, needs to be bathed in bed, needs to be  
24 fed, needs their clothes washed, and then you decide  
25 whether you want to take this patient on or not or

1 just to just be there for company.

2 Q. So you as the home health aide get to decide  
3 the scope of the services that you are willing to  
4 provide to these patients; correct?

5 A. Correct.

6 Q. Who do you work for as a home health aide,  
7 the patient or the nurse registry?

8 A. I would say I work for both because I work  
9 with the patient, and the company pays me.

10 Q. And what does the company -- when you say  
11 "company," you're referring to the nurse registry;  
12 correct?

13 A. That is correct.

14 Q. Who terminate -- who can terminate the  
15 relationship between the home health aide and the  
16 patient?

17 A. Myself. I determine if I want to continue  
18 or not.

19 Q. And does the patient have the right to end  
20 the relationship between the patient and the home  
21 health aide as well?

22 A. Yes, they also have the right. They decide  
23 if they want to be with that person or not.

24 Q. "That person" being the home health aide;  
25 correct?

1 A. Yes.

2 **Q. What responsibilities, if you know, does the**  
3 **home health agency have over a -- I'm sorry. Let me**  
4 **strike that.**

5 **What responsibilities does the nurse**  
6 **registry have in overseeing the duties of a home**  
7 **health aide such as yourself, Ms. Cruz?**

8 MR. CUMMINGS: Objection to the form.

9 THE WITNESS: They have managers and  
10 supervisors, and they -- they communicate with the  
11 families, and then the family can also report how  
12 well or how not well we do our jobs.

13 BY MR. GOLDBERG:

14 **Q. Who is Diana Ramirez?**

15 A. Diana Ramirez was the VIP manager.

16 **Q. Was she your direct contact at VIP?**

17 A. Yes.

18 **Q. Who is Liz McKinnon?**

19 A. I met her over the phone. By the way, a  
20 very rude person.

21 **Q. And who is your supervisor over at Sininani?**

22 A. Dina Ramirez, D-I-N-A, Ramirez.

23 **Q. Thank you.**

24 **Did you ever receive a performance review or**  
25 **evaluation from Diana Ramirez?**

1 THE INTERPRETER: The interpreter is just  
2 going to request clarification on two names that are  
3 very similar, so one second.

4 THE WITNESS: So Dina, D-I-N-A, Ramirez  
5 was -- was for Sininani; and we had Diana,  
6 D-A-Y-A-N-A [sic], for VIP.

7 And with her, I never got a response from  
8 her. Whenever I called, she said I don't have enough  
9 hours and never gave me a response and said, "Call  
10 Liz."

11 MR. GOLDBERG: Thank you for that  
12 clarification as to Diana versus Dina.

13 BY MR. GOLDBERG:

14 **Q. In response to what was just stated, did**  
15 **Ms. Cruz -- Ms. Cruz, did you ask Diana for any**  
16 **additional hours?**

17 A. No. She -- no, never.

18 My hours worked were the same hours given by  
19 the agency. But when it came to payment, the payment  
20 always came with less hours.

21 So I would tell Diana about the lack of  
22 hours, and she would say, "Next week. We will give  
23 them to you next week."

24 And when the week came by, I wouldn't get  
25 paid, and I noticed the payment would come in with

1 less hours. They took out hours.

2 **Q. We'll come back to that issue in a little**  
3 **bit.**

4 **Going back to the question.**

5 **Have you ever -- have you ever received any**  
6 **performance evaluations from Diana Ramirez, Liz**  
7 **McKinnon, or any other persons at VIP?**

8 A. From neither of them.

9 **Q. What training was provided to you by VIP in**  
10 **your performance of duties as an HHA?**

11 A. There wasn't any.

12 **Q. Is it correct that -- all of your training**  
13 **as a home health aide, was that pursuant to Florida**  
14 **law?**

15 MR. CUMMINGS: Objection to form.

16 THE WITNESS: (No verbal response.)

17 BY MR. GOLDBERG:

18 **Q. Ms. Cruz, are you going to answer that**  
19 **question?**

20 A. I didn't understand the question. I heard  
21 "Florida law," and that's all I heard.

22 **Q. No problem. We'll strike that question.**

23 **Did anybody at VIP ever tell you how to**  
24 **perform the services that you provided to any of**  
25 **VIP's patients?**

1 A. Never.

2 **Q. What equipment did VIP provide you in the**  
3 **performance of your services to the patients?**

4 A. Nothing. I strongly asked for gloves and  
5 masks, but they didn't provide me with anything.

6 **Q. Did you provide your own gloves and masks?**

7 A. I had to purchase my own.

8 Even at that time, during the pandemic,  
9 I had a very contaminated patient, and I was told --  
10 I called Diana, and I was told that the agency  
11 wouldn't provide gloves, that I had to purchase them  
12 on my own.

13 THE INTERPRETER: Interpreter is going to  
14 add something else that I didn't catch from  
15 Ms. Valdivieso. One second.

16 Okay. I can't clarify the exact medical  
17 term for a second, but it's a type of -- when you're  
18 in bed for too long.

19 So that patient was not only contaminated  
20 but had a lot of, I'm guessing, sores. So I just  
21 wanted to add that to that statement.

22 MR. GOLDBERG: Thank you for that  
23 clarification, Madam Interpreter.

24 THE INTERPRETER: You're welcome. Thank  
25 you.

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1 BY MR. GOLDBERG:

2 **Q. Who determined the amount of hours that you**

3 **worked for the patients of VIP?**

4 THE INTERPRETER: I didn't catch the first

5 part of the question, Counsel.

6 MR. GOLDBERG: Certainly.

7 BY MR. GOLDBERG:

8 **Q. Ms. Cruz, who determined the amount of hours**

9 **that you provided service to each of the VIP**

10 **patients?**

11 A. Diana.

12 **Q. And you as the HHA had the right to accept**

13 **or not accept those hours; correct?**

14 A. Yes.

15 **Q. Did anybody at VIP ever prevent you from**

16 **having any other employment or contractual**

17 **relationships?**

18 A. No.

19 **Q. How was your rate of pay determined for each**

20 **patient, Ms. Cruz?**

21 A. They would send a case that would -- that

22 would read -- the case would read "There's a

23 Mr. Perez, and this pays \$13 an hour"; it would say

24 how many hours, and you would accept it or decide not

25 to accept it.

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1 And if they didn't have someone else, they

2 would just send you directly for that job.

3 **Q. But you had the right to refuse to accept**

4 **that particular job; correct?**

5 A. Yes.

6 **Q. Is it true that if you are caring for**

7 **several patients of VIP at one time, that you could**

8 **be earning different hourly rates per patient?**

9 A. The rate is the same. It would depend if it

10 was on a weekend. Because it would be a bit more on

11 the weekends. But the rate would be the same of \$13

12 an hour.

13 **Q. Give me a second here.**

14 **Did you ever ask anyone at VIP for**

15 **additional hours or additional clients?**

16 A. No.

17 **Q. You started your relationship with VIP on or**

18 **about May 3rd, 2021; correct?**

19 A. Yes.

20 **Q. And your relationship ended in about July of**

21 **2022; correct?**

22 A. Yes.

23 **Q. Why did that relationship end?**

24 A. They didn't pay me.

25 **Q. So is it your testimony that you ended the**

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1 **relationship, or did VIP end the relationship?**

2 THE INTERPRETER: Interpreter is requesting

3 a repetition because I didn't catch all of the

4 information.

5 THE WITNESS: I ended the relationship with

6 them due to payment.

7 BY MR. GOLDBERG:

8 **Q. We'll come back to the nonpayment allegation**

9 **in a little bit.**

10 **I want to focus your attention to Exhibit A.**

11 **I sent a copy to Madam Court Reporter and to**

12 **Mr. Toussaint.**

13 **Exhibit A is a composite exhibit with Bates**

14 **name -- Bates-numbered All VIP 26 A 1 through 25.**

15 MR. GOLDBERG: Is it possible, Madam Court

16 Reporter, for this to be uploaded? I am very

17 computer illiterate, and I apologize for that.

18 (Discussion off the record.)

19 BY MR. GOLDBERG:

20 **Q. Ms. Cruz, I want you to look over this**

21 **composite document, which coincidentally is an**

22 **exhibit from a previous deposition that Mr. Cummings**

23 **took.**

24 **It is my Exhibit A, which is your onboarding**

25 **documents when your relationship with VPI began.**

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1 **Please look over these documents, ma'am, and**

2 **let me know when you are done with that.**

3 THE INTERPRETER: Interpreter caught that,

4 but again, reminding witness to keep sentences short.

5 It's impossible to catch all of it.

6 THE WITNESS: These documents, I signed

7 them, but I never understood what the documents said.

8 They were all in English and never in

9 Spanish, and I told them that I only spoke Spanish.

10 BY MR. GOLDBERG:

11 **Q. So is it your testimony that you signed**

12 **these documents without reading and/or understanding**

13 **the content of these documents?**

14 A. I told Diana that I didn't speak Spanish,

15 and I -- I signed these documents, but I never

16 understood what they meant.

17 **Q. So the entire 14 months that you had a**

18 **relationship with VIP, you never understood these**

19 **documents?**

20 A. No. No. And it never mattered until now.

21 **Q. Why did it not matter until now?**

22 A. Because they never asked anything of me.

23 **Q. Yet you performed under the terms of these**

24 **documents; is that correct?**

25 MR. CUMMINGS: Objection to form.

<p>Page 31</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. GOLDBERG:</p> <p>3 <b>Q. And you were compensated for your services</b></p> <p>4 <b>as an HHA under the terms of these documents;</b></p> <p>5 <b>correct?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And you never had or requested anybody to</b></p> <p>8 <b>interpret what these documents that you signed meant?</b></p> <p>9 A. They said that they sent -- they gave this</p> <p>10 to everyone they admitted as HHA, that -- the fact</p> <p>11 that I didn't know understand English didn't matter,</p> <p>12 but I myself added to this document that I didn't</p> <p>13 speak English.</p> <p>14 <b>Q. And who is the person or the persons that</b></p> <p>15 <b>they include?</b></p> <p>16 A. The people that hired me, Diana.</p> <p>17 <b>Q. Nonetheless, the signatures and initials</b></p> <p>18 <b>that appear on this composite exhibit, those are your</b></p> <p>19 <b>signature and initials; correct?</b></p> <p>20 A. Yes.</p> <p>21 MR. GOLDBERG: We can take this one down,</p> <p>22 Madam Court Reporter.</p> <p>23 THE INTERPRETER: Interpreter would like to</p> <p>24 request a short break, if that's okay.</p> <p>25 MR. GOLDBERG: No objection here.</p>	<p>Page 33</p> <p>1 copies from the bank.</p> <p>2 <b>Q. Did you file tax returns for the years 2021</b></p> <p>3 <b>and 2022?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. And you received a 1099 tax form from VIP?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And those tax forms identified you as an</b></p> <p>8 <b>independent contractor; correct?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Is it still your testimony that you do not</b></p> <p>11 <b>know if you're an independent contractor or not?</b></p> <p>12 A. I got confused with the question, yes.</p> <p>13 <b>Q. So your testimony is that you were an</b></p> <p>14 <b>independent contractor with VIP?</b></p> <p>15 A. I am an independent contractor.</p> <p>16 <b>Q. With VIP?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. What were the names of the patients that you</b></p> <p>19 <b>provided care for during your tenure with VIP?</b></p> <p>20 THE INTERPRETER: Interpreter is going to</p> <p>21 request the third person.</p> <p>22 THE WITNESS: The first was Gabrielle -- the</p> <p>23 first person -- no, the first patient was Gabrielle</p> <p>24 Gonzalez; the second patient was Angela Melendez; and</p> <p>25 the third patient was Cesar, and last name is</p>
<p>Page 32</p> <p>1 Do you want to take 10 minutes?</p> <p>2 THE INTERPRETER: Yes, that would be fine.</p> <p>3 MR. CUMMINGS: Just for ease of time, can we</p> <p>4 just come back at 11:15?</p> <p>5 MR. GOLDBERG: 11:15?</p> <p>6 MR. CUMMINGS: Yeah, because it's 11:04 now,</p> <p>7 so I mean, yeah, okay.</p> <p>8 MR. GOLDBERG: 11:15 it is.</p> <p>9 THE INTERPRETER: Yes, that's fine.</p> <p>10 (Recess taken from 11:04 a.m. to 11:14 a.m.)</p> <p>11 BY MR. GOLDBERG:</p> <p>12 <b>Q. Ms. Cruz, notwithstanding that you testified</b></p> <p>13 <b>that you did not understand the documents that you</b></p> <p>14 <b>signed with VIP, do you acknowledge that you were an</b></p> <p>15 <b>independent contractor with VIP?</b></p> <p>16 A. I don't know.</p> <p>17 <b>Q. What don't you know, ma'am?</b></p> <p>18 A. That I don't know if I'm an independent</p> <p>19 contractor with them.</p> <p>20 <b>Q. You were paid for and received copies of</b></p> <p>21 <b>paycheck stubs; correct?</b></p> <p>22 A. My payments were automatic.</p> <p>23 <b>Q. You received copies of paycheck stubs;</b></p> <p>24 <b>correct?</b></p> <p>25 A. I never received a copy from them. I have</p>	<p>Page 34</p> <p>1 I-Z-I-Q-U-E; his wife, Yolanda, last name Izique,</p> <p>2 I-Z-I-Q-U-E.</p> <p>3 BY MR. GOLDBERG:</p> <p>4 <b>Q. Okay. So we have Gonzalez, Melendez, and</b></p> <p>5 <b>Izique; correct?</b></p> <p>6 A. Uh-huh. And, sorry, also Alicia Soto,</p> <p>7 S-O-T-O.</p> <p>8 <b>Q. Did you provide care as a home health aide</b></p> <p>9 <b>for all of these four patients at the same time or at</b></p> <p>10 <b>different times?</b></p> <p>11 A. I worked with Cesar, Izique, and Yolanda</p> <p>12 Izique at the same time, and then also with Angela</p> <p>13 Melendez. All three of them in the same day.</p> <p>14 <b>Q. And what about Gonzalez and Soto?</b></p> <p>15 A. Gabrielle Gonzalez passed away, and then I</p> <p>16 was assigned to Alicia Soto on her case.</p> <p>17 Then I had Cesar and Yolanda as fixed work,</p> <p>18 fixed patients. And then I was given Angela as fixed</p> <p>19 as well. All three of them, the same day with</p> <p>20 different times.</p> <p>21 <b>Q. Okay. Thank you for clarifying that.</b></p> <p>22 <b>Did you complete a time sheet for each</b></p> <p>23 <b>patient, for each -- let me rephrase that. Excuse</b></p> <p>24 <b>me.</b></p> <p>25 <b>For each patient, did you complete a visit</b></p>

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A. Never.

**Q. Allow me one second, please.**

**Ms. Cruz, are you familiar with the HHA  
age calendaring program?**

THE INTERPRETER: Counsel, I didn't catch the word after "exchange."

MR. GOLDBERG: Calendaring.

Let me rephrase that. Let me rephrase that.

THE INTERPRETER: Yes. Thank you.

MR. GOLDBERG: I apologize. I'm trying to

make things easy for interpretation, but sometimes, I guess, I complicate it even more.

BY MR. GOLDBERG:

**Q. Ms. Cruz, are you familiar with the HHA exchange program?**

A. Do I know the HHA exchange program? No.

**Q. You're not familiar with it?**

A. No.

**Q. Is it fair to say, then, that you have never used this program?**

A. I don't understand. I don't know.

**Q. Was there ever a program that VIP asked you to download onto your cell phone?**

A. No.

**Q. When you first learned that there were**

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some --

MR. GOLDBERG: We can take down the exhibits, Madam Court Reporter. Thank you.

BY MR. GOLDBERG:

**Q. Madam -- I'm sorry.**

**Ms. Cruz, when you observed or believed that there was a pay discrepancy between the hours that you provided services as a home health aide to one of the patients, did you address this concern with anybody at VIP?**

A. No.

**Q. I am confused. Allow me to try to clarify.**

**You never noticed that there was a discrepancy between the hours that you submitted for payment and the amount of pay that you received from VIP?**

A. I didn't understand the question.

**Q. You testified that you believe that VIP did not pay you for all of the hours that you were entitled to be paid for; is that correct?**

A. Yes.

**Q. When you noticed this discrepancy, did you bring it to anybody at VIP's attention, such as Diana Ramirez?**

A. Always when I notice irregularities with the

A. Always when I notice irregularities with the

A. Always when I notice irregularities with the

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1 payment, I told Diana, and she didn't pay attention  
 2 to me.  
 3 **Q. So it's your testimony that at no time did**  
 4 **VIP cut you an additional check or draft to cover the**  
 5 **discrepancy in the payments?**  
 6 A. One time VIP did pay, and I had to go all  
 7 the way over to West Palm Beach for a check that  
 8 week.  
 9 I did not receive payment. It was a 2-hour  
 10 drive to get that check. And I was mistreated at the  
 11 office.  
 12 **Q. How were you mistreated?**  
 13 A. When I got there at 1:00 p.m. and I had to  
 14 leave work without barely any gas left, I was  
 15 received and told that they were going to lunch, and  
 16 they closed the door on my face until 2:00 p.m., and  
 17 that's how long I waited to get a check.  
 18 **Q. Did that check reconcile the payroll**  
 19 **discrepancy that you were concerned about?**  
 20 A. No. That was just one week's pay. The --  
 21 there was still pay regularities left. They only  
 22 paid for one week.  
 23 **Q. But you testified earlier you do not know**  
 24 **how many hours are in dispute; correct?**  
 25 A. I can't recall. It's been one year since,

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1 and I can't recall the exact number of hours.  
 2 **Q. Do you know which patient these hours in**  
 3 **dispute are in regards to?**  
 4 A. Yes. Cesar -- Cesar and Yolanda Izique,  
 5 Angela Melendez, and Alicia Soto.  
 6 **Q. Do you know what time frames these**  
 7 **discrepancies occurred within?**  
 8 THE INTERPRETER: Interpreter requests  
 9 clarification. When you say "time frame," Counsel,  
 10 do you mean month or...  
 11 MR. GOLDBERG: When these discrepancies  
 12 arose, such as a month --  
 13 THE INTERPRETER: Can you give me the  
 14 months?  
 15 MR. GOLDBERG: -- or period --  
 16 THE INTERPRETER: Oh, yeah, a period of  
 17 time.  
 18 MR. GOLDBERG: The period of time.  
 19 I apologize.  
 20 THE INTERPRETER: No, no. It's okay. I'm  
 21 just -- in Spanish, I'm trying to -- thank you.  
 22 THE WITNESS: No. This was -- not right  
 23 now. This was so long ago, but it's all documented.  
 24 The lawyer has it.  
 25 I don't know the exact time frame.

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1 BY MR. GOLDBERG:  
 2 **Q. When did you begin work with Sininani?**  
 3 A. I started work with Sininani around August,  
 4 I believe. August, yes. August.  
 5 **Q. Of 2022?**  
 6 A. 2021, I think.  
 7 **Q. So you worked for Sininani and VIP at the**  
 8 **same time?**  
 9 A. No. I can't recall the exact date, but  
 10 I remember it was August I ended work with VIP, and  
 11 I started work with Sininani.  
 12 **Q. Thank you for that clarification.**  
 13 **When you went to work for Sininani, did any**  
 14 **of VIP's clients that you've identified follow you**  
 15 **over to Sininani?**  
 16 A. Yes, they switched, and I already had an  
 17 application with Sininani.  
 18 **Q. Who? Which clients switched?**  
 19 A. Cesar and Yolanda Izique.  
 20 **Q. What about Soto or the Melendez?**  
 21 A. No.  
 22 **Q. You stated you already had an application in**  
 23 **place. What do you mean?**  
 24 A. After I left VIP, I applied for Sininani,  
 25 and that's where I'm currently working.

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1 **Q. How did Izique learn that you were going to**  
 2 **work for Sininani?**  
 3 THE INTERPRETER: Counsel, can you repeat  
 4 the first question? I didn't hear the first word.  
 5 MR. GOLDBERG: I apologize.  
 6 BY MR. GOLDBERG:  
 7 **Q. How did the Iziques -- or again, I apologize**  
 8 **if I'm messing up their names -- learn that you were**  
 9 **going to take employment -- or establish a**  
 10 **relationship with Sininani?**  
 11 THE INTERPRETER: And to clarify, you mean  
 12 Izique?  
 13 MR. GOLDBERG: Izique, yes.  
 14 THE INTERPRETER: Interpreter is requesting  
 15 pause. So one second.  
 16 THE WITNESS: They had -- I had a really  
 17 good working relationship with them, a very nice  
 18 relationship, and I told them I had to leave due to  
 19 the nonpayment.  
 20 The relationship -- the relationship that  
 21 I had with the family was great. They liked my work.  
 22 I wanted to continue with them, but the agency was  
 23 not paying me.  
 24 They said, "We are leaving VIP also, then,  
 25 because if they don't pay you, then they're not going

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1 to pay the next people that come and work with us."

2 I left and then applied to a different

3 agency; and then 15 days afterwards, they arrived and

4 requested me. They are my patients currently.

5 BY MR. GOLDBERG:

6 **Q. And did you have this discussion with,**

7 **again, Izique while you were still employed -- I'm**

8 **sorry, while you still had a relationship with VIP?**

9 A. They supported me the entire time because

10 their daughter was always present, and her

11 daughter -- their daughter was also in touch with

12 Diana and knew of the circumstances of me not being

13 paid.

14 She tried to help fix the hours with Diana,

15 but that didn't happen.

16 **Q. So these conversations took place while you**

17 **were still an independent contractor with VIP;**

18 **correct?**

19 A. Yes, always. I never wanted to leave VIP

20 because I appreciated that they spoke my language,

21 but it was due to the fact that I was not getting

22 paid that I decided to leave.

23 **Q. Who at VIP spoke your language?**

24 A. Diana, Evelyn, all of them. They picked up

25 in Spanish, but they -- they knew of my constant

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1 worries about the payment, but it just wasn't

2 resolved.

3 **Q. So your testimony earlier that you were**

4 **forced to sign this engage -- these engagement**

5 **documents, Exhibit A, and nobody could explain them**

6 **to you, you're now testifying that Diana and others**

7 **spoke Spanish --**

8 MR. CUMMINGS: Objection.

9 BY MR. GOLDBERG:

10 **Q. -- and read you the proposal; correct?**

11 MR. CUMMINGS: Objection to form.

12 THE INTERPRETER: I didn't catch the last

13 part, but I caught the beginning. So one second,

14 Counsel, for the first part of the question.

15 What was the last part? I didn't catch

16 that, the last part of the question, Counsel

17 Goldberg, after others -- Diana and others spoke

18 Spanish, and I didn't catch the last part.

19 MR. GOLDBERG: "But they were available for

20 you to discuss this onboarding independent agreement

21 with; correct?"

22 THE WITNESS: They never discussed it,

23 and I always asked. They said, "Just sign. Everyone

24 starts the job like that."

25

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1 BY MR. GOLDBERG:

2 **Q. Give me a couple seconds here, please.**

3 **I believe we're close to wrapping up.**

4 **When you resigned, according to your**

5 **testimony, you resigned; you were not fired**

6 **from VI -- from your relationship with VIP; correct?**

7 A. If they don't pay me, what am I going do?

8 I had to leave.

9 **Q. Did VIP ever inform you that they were going**

10 **to be filing a lawsuit against you for breach of your**

11 **contract with them?**

12 A. No. I can't recall.

13 **Q. Give me a second here. I think we're just**

14 **about done.**

15 **I believe we're done on my end.**

16 **Mr. Cummings?**

17 MR. CUMMINGS: Yeah I'll do a quick -- well,

18 I don't know how quick it will be, but I'll do some

19 follow-up.

20

21 EXAMINATION

22 BY MR. CUMMINGS:

23 **Q. So, Ms. Cruz, do you know what the legal**

24 **definition of an "independent contractor" is?**

25 A. No.

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1 **Q. You do you know what the legal definition of**

2 **a "nurse registry" is?**

3 A. No.

4 **Q. Do you know what the legal definition of a**

5 **"home health aide" is?**

6 A. I don't know. That's why the agencies hire

7 us.

8 THE REPORTER: Did you say, "I don't know.

9 The agencies hire us"?

10 THE INTERPRETER: "I don't know. That's why

11 the agencies hire us." Yes.

12 BY MR. CUMMINGS:

13 **Q. How did you first hear about All VIP?**

14 A. It was recommended by a friend. She gave me

15 the number. I called. They asked for all the

16 documents that -- that were needed to apply, the

17 certifications. I went. I applied. And they gave

18 me work.

19 **Q. Do you know who you spoke to when you called**

20 **before you started working with All VIP?**

21 A. I can't recall her name.

22 **Q. The woman that you spoke with before you**

23 **started working with All VIP, did she speak Spanish?**

24 A. Yes, she spoke Spanish.

25 **Q. Do you remember if that woman --**

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1 A. The Spanish she spoke was very minimal, very  
2 little Spanish.

3 **Q. And can you say for sure that the woman you**  
4 **spoke to when you first called All VIP was not Diana**  
5 **Ramirez?**

6 A. No, it wasn't Diana Ramirez; it was another  
7 woman that helped me fill out the application.

8 **Q. Which office did that woman who you first**  
9 **spoke to work in?**

10 A. Boca Raton.

11 **Q. Which VIP office did you work out of?**

12 A. Boca Raton.

13 **Q. Which VIP office was Diana Ramirez located**  
14 **in -- sorry, located in?**

15 A. Boca Raton.

16 **Q. When did you tell Diana Ramirez that you did**  
17 **not speak English?**

18 A. Since the first time I was given a case that  
19 was in Boca Raton, I was sent, and the people I was  
20 sent with only spoke -- only spoke English, and Liz  
21 intervened and got me out of there.

22 **Q. Mr. Goldberg, the attorney for VIP,**  
23 **previously showed you what he marked as Exhibit A,**  
24 **and I'm going to show you that document again.**  
25 **Where did you fill this document out?**

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1 A. In Boca Raton.

2 **Q. Did you fill out your employment agreement**  
3 **with VIP at their Boca Raton office?**

4 A. Yes.

5 **Q. Was anybody present with you when you were**  
6 **filling out the agreement?**

7 A. Yes. The girl that was giving me all the  
8 documentation to fill out.

9 When I was filling out, I told her I didn't  
10 understand. She said, "This is where you put your  
11 name. This is where you put this."

12 **Q. That girl that you're referring to, was she**  
13 **speaking to you in English or Spanish?**

14 A. She spoke to me in English and with the  
15 translator program into Spanish.

16 **Q. What translator program are you referring**  
17 **to?**

18 A. I have a translation program on my phone.  
19 I can't recall the name. I can't pronounce it.

20 **Q. Please explain to me how this process went.**  
21 **Did you type in words from the application**  
22 **and then translate them over into -- from English to**  
23 **Spanish, or did you -- sorry. Let me -- scratch that**  
24 **whole question.**  
25 **Who was using the translator program, you or**

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1 **the woman that worked at VIP?**

2 A. I used it. I was using the translation --  
3 the translation program.

4 **Q. Did you use the translation program to**  
5 **translate what she was saying to you?**

6 A. Yes.

7 **Q. Did you -- did the program record her voice,**  
8 **or were you typing in what she was saying?**

9 A. It was recording her voice.

10 **Q. Did you -- so looking at this employment**  
11 **agreement in Exhibit A, we can see that it has about**  
12 **one, two, three, four, five, six, seven, eight, nine,**  
13 **ten, eleven -- it's about 25 pages, which is the**  
14 **whole of Exhibit A.**

15 **Did you type all of the words from this**  
16 **25-page document into your translation program?**

17 A. Yes. Because no, she would say, "Here.  
18 Here are the initials," so I would just translate the  
19 beginning, and then the rest was all the same.

20 **Q. So the -- sorry. Go ahead.**

21 A. Because it was all signature, name, and --  
22 it was all "Sign here. Name here. Last name here.  
23 And signature" throughout the whole document.

24 **Q. Moving over to Exhibit B.**  
25 **You were previously showed these time sheets**

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1 **earlier in the deposition. Do you remember that?**

2 A. Yes.

3 **Q. Does your handwriting appear anywhere on**  
4 **this first time sheet that I'm showing you in Exhibit**  
5 **B?**

6 A. Yes. Of course.

7 **Q. Where can I find your handwriting on this**  
8 **time sheet?**

9 A. In the hours -- wait a second. This isn't  
10 mine. It's someone else's.

11 This is Jenny's. We work together.

12 **Q. What do you mean by that? This is not your**  
13 **time sheet; this is another person's time sheet who**  
14 **was working with VIP?**

15 A. Exactly. Exactly. This is not my time  
16 sheet. This is my coworker Jenny Landa's time sheet.  
17 This is not my time sheet.

18 **Q. And just for the record, I'm referring to**  
19 **page 1 of Exhibit B, which is a time sheet from the**  
20 **week of June 13, 2022, through June 17, 2022.**

21 **Ms. Cruz, do you know where this time sheet**  
22 **for Jenny Landa came from?**

23 THE INTERPRETER: Counsel, I didn't catch  
24 the last part of the question. Can you repeat it?  
25 MR. CUMMINGS: Yeah, I'm just asking her

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1 does she know where this time sheet that we're  
 2 looking at here came from, the picture of it.  
 3 THE WITNESS: I don't know. I don't know  
 4 how that document arrived. It's not mine.  
 5 BY MR. CUMMINGS:  
 6 Q. Did Jenny Landa also work as a home health  
 7 aide with the Iziques?  
 8 A. Yes, she was working with the Iziques.  
 9 Q. At the same time as you or before you?  
 10 A. She was working the morning shift, and I was  
 11 working the night shift. When I was coming in, she  
 12 was leaving.  
 13 Q. Moving down to page 2 of Exhibit B, I'll  
 14 make this a little bigger, is -- do you recognize the  
 15 handwriting on this time sheet?  
 16 And for the record, this is from June 13th,  
 17 2022, to June 19, 2022?  
 18 A. Yes, I filled that out with the Iziques'  
 19 daughter. She spoke with Diana to clarify the  
 20 discrepancy with the hours; they still didn't pay for  
 21 those hours.  
 22 Q. What part of this time sheet shows me your  
 23 handwriting?  
 24 A. The lower part, the bottom part.  
 25 Q. Right now I'm focused on the top. Can you

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1 see where the name "Daisy" is?  
 2 A. Yes. On the top left of my screen is  
 3 "Daisy," yes.  
 4 Q. Is that your handwriting, the word "Daisy"?  
 5 A. No. The bottom is where you can find my  
 6 handwriting. This is a copy of the corrected hours  
 7 by Diana, hours that weren't paid.  
 8 Q. For this particular week? Are you saying  
 9 that these hours written in here are not your  
 10 handwriting?  
 11 A. Because these are the hours that Diana  
 12 corrected, and there were issues with the schedule.  
 13 She did this. I signed it. And these hours  
 14 were never paid.  
 15 Q. Okay. So, Ms. Cruz, I'm going to need you  
 16 to listen to my question very carefully because  
 17 you're answering a different question from what I'm  
 18 asking you.  
 19 The question that I'm asking you requires a  
 20 yes-or-no answer.  
 21 Do you see where the hours are on this time  
 22 sheet?  
 23 A. The hours were placed on the bottom.  
 24 I can't see the total of hours.  
 25 Q. Okay. All right. On your screen right now,

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1 do you see a document at the top where it says  
 2 "6/13"?  
 3 A. Yes. I see the top, but I don't see the  
 4 bottom, which is where there's the total hours shown.  
 5 Q. Yes, because I'm not asking you about the  
 6 bottom.  
 7 And for some reason, I think that you're  
 8 assuming that I'm going to ask you something that I'm  
 9 not asking you.  
 10 MR. GOLDBERG: Object to form.  
 11 BY MR. CUMMINGS:  
 12 Q. And so I would please -- please just answer  
 13 the question that I'm asking you.  
 14 Okay. The handwriting at the top of this  
 15 page, is any of it your handwriting?  
 16 A. No.  
 17 Q. Do you know whose handwriting it is?  
 18 A. Anna Maria.  
 19 Q. Who is Anna Maria?  
 20 A. The daughter of the couple.  
 21 Q. Okay. And by "the couple," you mean the  
 22 Iziques?  
 23 A. (No verbal response.)  
 24 Q. "Yes"? Anna Maria is the daughter of the  
 25 Iziques?

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1 A. Yes.  
 2 Q. Did Anna Maria always fill out the hours on  
 3 your time sheets?  
 4 A. No.  
 5 Q. It just so happens that on this particular  
 6 time, on page 2 of Exhibit B, that Anna Maria filled  
 7 out these hours; is that correct?  
 8 A. Yes.  
 9 Q. Now, moving down to the bottom of this same  
 10 document, on page 2 of Exhibit B, do you see your  
 11 handwriting anywhere?  
 12 A. Yes.  
 13 Q. Okay. And where is your handwriting?  
 14 A. Where you see "Cruz Valdivieso HHA."  
 15 Q. Now, you were also explaining that the hours  
 16 for this particular week were incorrect.  
 17 Is that what you were trying to tell me  
 18 before?  
 19 THE INTERPRETER: Can the interpreter  
 20 request of Counsel Cummings to tell the witness, or  
 21 I will, for the -- that please keep the sentences  
 22 short so that I'm able to catch everything. I only  
 23 caught the beginning, if that's okay.  
 24 MR. CUMMINGS: Yeah, you can instruct her.  
 25 That's fine.

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1 BY MR. CUMMINGS:  
2 **Q. Okay. So now -- go ahead, because you have**  
3 **to interpret. Go ahead. Sorry.**  
4 A. Anna Maria helped because she would speak to  
5 Diana. They -- they fixed the schedules. The hours  
6 were correct, but they are were still not paid.  
7 And then when the hours were finally  
8 corrected, they said they're going to pay, "just go  
9 ahead and send the time sheet," but even though the  
10 hours were corrected, Diana still didn't pay for  
11 those hours. I didn't get paid for those hours.  
12 **Q. Are you referring specifically to the hours**  
13 **for this week of June 13, 2022, to June 19, 2022?**  
14 A. No, not just those. I look at that, and  
15 I can remember a little bit, but I can't recall the  
16 exact dates.  
17 **Q. Right.**  
18 **So you're just speaking generally that you**  
19 **were not paid for all of your hours, not about this**  
20 **particular time sheet; is that right?**  
21 A. Correct.  
22 **Q. Previously, VIP's attorney asked you if**  
23 **these were all of the time sheets for all of the time**  
24 **that you worked at VIP.**  
25 **Do you remember that?**

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1 A. Yes.  
2 **Q. And now how do you know that all 53 pages of**  
3 **this Exhibit B document are all of the hours that you**  
4 **worked for VIP?**  
5 A. I can't see all of the Exhibit B you're  
6 referring to. I can't recall that now. I can't  
7 recall.  
8 If I'm able to see all of the pages, then,  
9 yes, but I have nothing here with me.  
10 **Q. And have you ever seen all 53 pages of this**  
11 **document before?**  
12 A. No. I saw the pages after I left, when VIP  
13 sent all the documents and all the clauses.  
14 **Q. Before this deposition today, have you ever**  
15 **seen all 53 pages of the document that I am currently**  
16 **showing you on your screen, which is marked as**  
17 **Exhibit B?**  
18 A. Is Exhibit B the time sheets that we filled  
19 out with the hours?  
20 **Q. Exhibit B is what I am showing you on your**  
21 **screen right now.**  
22 A. Okay. Perfect. Yes.  
23 **Q. What are you answering "yes" to?**  
24 A. That if that is the exhibit that you're  
25 asking me, then I do recognize it.

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1 **Q. How do you recognize it?**  
2 A. Because those were the papers we filled out  
3 in order to get payment each week.  
4 **Q. Yeah.**  
5 **Do you realize that this particular document**  
6 **that I'm showing you right now has 53 pages?**  
7 A. No.  
8 **Q. But previously, when Mr. Goldberg asked you**  
9 **if these were all of your time sheets, you said yes;**  
10 **is that correct?**  
11 A. Yes, they're talking about this -- I'm going  
12 to have to --  
13 MR. CUMMINGS: You know what? Scratch it.  
14 Scratch the question and answer. Let me do this.  
15 BY MR. CUMMINGS:  
16 **Q. On page 1, this is not your time sheet;**  
17 **correct?**  
18 A. These are the -- these are the time sheets  
19 that we were -- we would fill out with our hours.  
20 This is not my time sheet. This is Jenny  
21 Landa's time sheet.  
22 **Q. Okay. On page 3 of this document, is this**  
23 **your time sheet?**  
24 **You have to let the interpreter finish the**  
25 **interpretation.**

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1 **So I'm going to ask the question again.**  
2 **On page 3, is this your time sheet?**  
3 A. No, it's not mine.  
4 **Q. On page 5 of Exhibit B, is this your time**  
5 **sheet?**  
6 A. No.  
7 **Q. So all of the time sheets that make up this**  
8 **document do not belong to you; is that right?**  
9 A. No. In this document, no.  
10 **Q. And can you say that every time sheet that**  
11 **you ever filled out for VIP is contained within this**  
12 **document at Exhibit B?**  
13 A. No.  
14 **Q. If you had to guess, how many time sheets do**  
15 **you think you filled out when you worked for All VIP?**  
16 A. I can't recall. There were many. I can't  
17 recall.  
18 **Q. Would you say it was more than 20?**  
19 A. Of course. I was with them for over  
20 2 years.  
21 **Q. Would you say it was more than 100?**  
22 A. I don't know. I don't know.  
23 **Q. Did you work for All VIP every week over**  
24 **those 2 years?**  
25 A. Yes. Almost 2 years.

1 **Q. And did you fill out a separate time sheet**  
2 **for every patient that you saw?**  
3 A. Yes.  
4 **Q. And sometimes you saw more than one patient**  
5 **in one day?**  
6 A. Yes. Two patients a day.  
7 **Q. And you worked how many days a week for All**  
8 **VIP?**  
9 A. I worked all week, about 84 hours plus,  
10 100 hours.  
11 **Q. When you say "all week," how many days are**  
12 **you referring to?**  
13 A. Monday through Sunday.  
14 **Q. When did you first --**  
15 A. Sorry. Monday through Saturday.  
16 **Q. Okay. When did you first realize that you**  
17 **were not being paid properly by All VIP?**  
18 A. Since I started working for VIP, there had  
19 been irregular payments.  
20 And then I spoke to Diana, and payments  
21 started to come in more on time afterwards.  
22 The -- there were some issues with payroll.  
23 I don't know what happened with payroll. Then they  
24 just didn't start paying every week.  
25 **Q. How did you discover that your payments were**

1 **irregular?**  
2 A. Since the beginning, there had been issues  
3 with payment. I would tell Diana, and she would say,  
4 "I'll deposit," and she would deposit -- they would  
5 deposit, but then each week, it was the same issue.  
6 Then it came to a point where I wasn't  
7 getting paid. I complained, but there was no  
8 payment.  
9 THE INTERPRETER: Interpreter would like to  
10 request a short break if that's okay.  
11 MR. CUMMINGS: Okay. How long do you need?  
12 When do you want to come back?  
13 THE INTERPRETER: Is 10:00 okay?  
14 MR. CUMMINGS: You want to come back at  
15 12:40?  
16 THE INTERPRETER: Yes, okay.  
17 MR. CUMMINGS: Okay. Could you please just  
18 let me client know that she can cut her camera and  
19 microphone off?  
20 THE INTERPRETER: Yes.  
21 (Recess taken from 12:28 p.m. to 12:39 p.m.)  
22 BY MR. CUMMINGS:  
23 **Q. Did you realize you were not paid correctly**  
24 **because the hours on your time sheet did not match**  
25 **the paychecks you were receiving?**

1 A. (No verbal response.)  
2 MR. CUMMINGS: I guess, Interpreter, can you  
3 please repeat the question to her so we can get the  
4 response?  
5 THE WITNESS: Correct.  
6 BY MR. CUMMINGS:  
7 **Q. Who did you complain to when the hours on**  
8 **your time sheet did not match the money you received**  
9 **in your paycheck?**  
10 A. For the manager, Diana Ramirez, she said  
11 she, "I sent the hours to Liz. I don't understand  
12 why they haven't paid them yet."  
13 **Q. Okay. So Diana Ramirez acknowledged that**  
14 **your pay was incorrect sometimes?**  
15 A. Yes.  
16 **Q. How would Diana Ramirez acknowledge that**  
17 **your pay was incorrect? Was that through email? Was**  
18 **that verbally or through text?**  
19 A. Text and verbal.  
20 **Q. When you had a verbal conversation with**  
21 **Diana Ramirez about incorrect paychecks, was it over**  
22 **the phone or in the office?**  
23 A. Phone and text.  
24 **Q. How many times did you complain about**  
25 **receiving incorrect payment over the 2 years that you**

1 **worked with VIP?**  
2 A. I always complained about the -- the payment  
3 inconsistencies, but these were affirmed in March.  
4 And in April, when the -- the payments  
5 became even more irregular and more inconsistent.  
6 **Q. Are you referring to March and April of**  
7 **2022?**  
8 A. Yes.  
9 **Q. And to this day, you have not received all**  
10 **the money that you're owed for the incorrect**  
11 **payments?**  
12 A. I haven't received -- I haven't received the  
13 money owed for all the incorrect payments.  
14 **Q. Okay. No further questions.**  
15  
16 FURTHER EXAMINATION  
17 BY MR. GOLDBERG:  
18 **Q. Okay. I'll try to make this as brief as**  
19 **possible.**  
20 **Going back to -- and we don't need to bring**  
21 **it up, but Exhibit B, which was the time sheets,**  
22 **Ms. Cruz, is it true that the only time sheets that**  
23 **apply to your claims in this lawsuit are the ones**  
24 **that you signed for; correct?**  
25 A. That confuses me. The talk about exhibit

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1 this, Exhibit B confuses me.

2 I would like to know if I have a

3 representative representing me during this

4 deposition.

5 MR. GOLDBERG: Mr. Cummings, do you want to

6 acknowledge that?

7 MR. CUMMINGS: I'm sorry. I actually didn't

8 catch everything she said.

9 She said she was confused about -- could you

10 repeat it, Madam Interpreter?

11 THE INTERPRETER: "That confuses me. The

12 exhibit this, exhibit that, Exhibit B confuses me.

13 I'd like to know, do I have a representative here for

14 me during this deposition."

15 MR. CUMMINGS: Oh, okay. Yeah, I'm your

16 attorney, Ms. Cruz, so I'm the representative here.

17 I can't give you advice in the deposition.

18 THE INTERPRETER: I just need the last part,

19 Counsel? I didn't catch that.

20 MR. CUMMINGS: I can't give you advice

21 during this deposition.

22 THE WITNESS: Yes, I'm confused because I'm

23 being showed Jenny's time sheet, which is not mine.

24 And I'm confused as to why they're showing me her

25 time sheet.

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1 BY MR. GOLDBERG:

2 **Q. And this is the reason why I'm trying to get**

3 **clarification that the only time sheets that are**

4 **germane to this lawsuit are the ones that are signed**

5 **by Ms. Cruz.**

6 **None of the other time sheets, whether it be**

7 **by Jenny, Ms. Murphy, or anybody else are relevant to**

8 **this lawsuit; correct?**

9 A. That is correct. I understand.

10 **Q. Thank you.**

11 **There was discussion about the time sheet**

12 **from June 13th through June 19th where Ms. Cruz**

13 **testified that this was a corrected time sheet that**

14 **was had by and signed for by Anna on behalf of the**

15 **patient; correct?**

16 A. Yes.

17 **Q. You testified that there was text messages**

18 **between you and Diana concerning your claims that you**

19 **were not properly paid; correct?**

20 A. Yes.

21 **Q. Are those text messages still available on**

22 **your phone?**

23 A. Yes. And I'd like to add that I also sent

24 some of those to my lawyer.

25 **Q. Some of them or all of them, ma'am?**

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1 A. Some because others were deleted.

2 **Q. You made the comment that Diana Ramirez**

3 **acknowledged payroll errors and that she was going to**

4 **address them with Liz.**

5 **Do you recall that?**

6 A. She said that she would send that to

7 payroll, that there were issues with payroll, that

8 they had changed the --

9 THE INTERPRETER: I'm going to have to ask

10 Ms. Cruz to repeat that.

11 MR. GOLDBERG: Okay. Maybe if I just

12 rephrase the question.

13 THE INTERPRETER: No. She said that the

14 thing is if she doesn't stop, I can't catch all of

15 it, so I -- I mentioned --

16 MR. GOLDBERG: I apologize.

17 THE INTERPRETER: No, no. It's okay.

18 THE WITNESS: Diana had said that the hours

19 would be paid, that there were issues with payroll,

20 that there was no payroll personnel, that they were

21 changing offices.

22 They told us to wait for the payments, that

23 they were going to give them and to wait for some

24 time, that there was change in personnel, that the

25 payments were not made.

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1 They left us one week without pay. There

2 was three people working at that house at that time,

3 but the next day we were paid.

4 There was no pay that Friday. We were

5 actually paid that Saturday. And since then, it

6 became an issue. We -- since then, there were

7 irregular payments, and I wasn't paid.

8 BY MR. GOLDBERG:

9 **Q. So is it fair to say that Diana acknowledged**

10 **that there were issues in the payroll system at the**

11 **time or that there was specific errors on behalf of**

12 **Ms. Cruz's time sheets?**

13 A. She acknowledged there were issues with the

14 payment system. I was apart of this apparent type of

15 lottery in regard to payment. Some people were paid;

16 some people were not. And most people left the

17 agency because of that.

18 **Q. You testified that you did not know the**

19 **exact amount of wages or compensation that was not**

20 **paid to you that is due; correct?**

21 A. Yes. I can't recall.

22 During that time, yes, I had the exact

23 amounts, but right now it's been so long, I don't

24 have them.

25 **Q. Does a document exist that identifies the**

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1 exact amount that is due to you?

2 A. I don't know. I sent the time sheets with

3 all my hours to my lawyer, and he has it.

4 Q. Does a document exist or documents that

5 identify the specific dates that you believe that you

6 were not properly paid for?

7 A. Yes. I sent that, and they exist. I sent

8 that to my lawyer when I was coming up with the --

9 with the lawsuit.

10 Q. Just give me one second. I believe that

11 we're concluded on my end.

12 MR. CUMMINGS: Sorry. No further questions

13 for me, and Ms. Cruz we will read.

14 MR. GOLDBERG: And we will order a copy.

15 THE REPORTER: Mr. Cummings, would you like

16 to order a copy of the transcript?

17 MR. CUMMINGS: Not at this time. Thank you.

18 But can I please have your email address? I saw

19 something at B Reporting.

20 THE REPORTER: Yeah.

21 (Deposition concluded at 12:56 p.m.)

22 (Deposition Exhibits A through D were marked

23 for identification by the court reporter after the

24 conclusion of the deposition.)

25

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1 - - -

2 C E R T I F I C A T E

3 - - -

4 UNITED STATES DISTRICT COURT )

5 SOUTHERN DISTRICT OF FLORIDA )

6

7 I hereby certify that I have read the

8 foregoing deposition by me given, and that the

9 statements contained herein are true and correct to the

10 best of my knowledge and belief, with the exception of

11 any corrections or notations made on the errata sheet,

12 if one was executed.

13

14 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

15

16

17

18

19

20 \_\_\_\_\_

21 CRUZ DAICELIS VALDIVIESO FIGUERA

22

23

24

25

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1 E R R A T A S H E E T

2 IN RE: STATE OF FLORIDA V. JOSEPH TRAEGER

3 DEPOSITION OF: CRUZ DAICELIS VALDIVIESO FIGUERA

4 TAKEN: June 6, 2023

5 DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

6 PAGE # LINE # CHANGE REASON

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19

20 Please forward the original signed errata sheet to this

21 office so that copies may be distributed to all

22 parties.

23 Under penalty of perjury, I declare that I have read my

24 Zoom Deposition and that it is true and correct subject

25 to any changes in form or substance entered here.

DATE: \_\_\_\_\_

SIGNATURE OF DEPONENT: \_\_\_\_\_

Page 70

1 UNITED STATES DISTRICT COURT )

2 SOUTHERN DISTRICT OF FLORIDA )

3

4

5 I, the undersigned authority, certify that

6 CRUZ DAICELIS VALDIVIESO FIGUERA, personally appeared

7 before me via Zoom on the 6th of June, 2023, and was

8 duly sworn.

9

10 WITNESS my hand and official seal this 13th

11 day of June, 2023.

12

13

14

15 \_\_\_\_\_

16 HALEY DAWN WESTRA, RPR, CRR

17 Reporter and Notary Public

18

19 Commission No. 638457

20 Expires: October 24, 2026

21

22

23

24

25

CERTIFICATE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA }

I, HALEY DAWN WESTRA, Reporter and Notary, in and for the State of Florida at large, do hereby certify that I was authorized to and did stenographically report the Zoom Deposition of CRUZ DAICELIS VALDIVIESO FIGUERA; that a review of the transcript was requested; and that the foregoing pages, numbered from 1 to 67, inclusive, are a true and correct transcription of my stenographic notes of said Zoom Deposition.

I further certify that said Zoom Deposition was taken at the time and place hereinabove set forth and that the taking of said Zoom Deposition was commenced and completed as hereinabove set out.

This Zoom Deposition occurred during the COVID-19 pandemic, conducted using videoconference technology, and it is therefore subject to the technological limitations of court reporting remotely.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

DATED this 13th day of June, 2023.

~~HALEY DAWN WESTRA, RPR, CRR~~  
STENOGRAPHIC REPORTER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 0:22-CV-61553-WPD

CRUZ VALDIVIESO FIGUERA,

Plaintiff,

vs.

ALL VIP CARE, INC., & LIZ  
VELAZQUEZ McKINNON,

Defendants.

IN RE: DEPOSITION OF CRUZ DAICELIS VALDIVIESO FIGUERA  
TAKEN: June 6, 2023  
DATE E-MAILED TO WITNESS:

TO: CRUZ DAICELIS VALDIVIESO FIGUERA  
(Read through OPPOSING COUNSEL)

The referenced transcript has been completed and awaits reading and signing.

The transcript is 67 pages and you should allow yourself sufficient time.

Thank You,

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:22-CV-61553-DIMITROULEAS/HUNT

CRUZ VALDIVIESO FIGUERA,

Plaintiff,

vs.

ALL VIP CARE INC. AND  
LIZ VELAZQUEZ MCKINNON,

Defendants.

\_\_\_\_\_ /

DEPOSITION OF DIANA RAMIREZ

TAKEN ON BEHALF OF THE PLAINTIFF

JUNE 7, 2023  
10:00 A.M. TO 12:56 P.M.

ALL PARTIES APPEARED REMOTELY  
PURSUANT TO  
FLORIDA SUPREME COURT ORDER AOSC20-23

REPORTED BY:  
DANIELLE J. BRAELOW, COURT REPORTER  
NOTARY PUBLIC, STATE OF FLORIDA

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1	APPEARANCES OF COUNSEL	1	INDEX OF EXHIBITS
2	ON BEHALF OF THE PLAINTIFF:	2	EXHIBIT DESCRIPTION PAGE
3	TOUSSAINT MARCUS CUMMINGS, ESQUIRE	3	PLAINTIFF'S:
4	FAIR LAW FIRM		
5	135 SAN LORENZO AVENUE, SUITE 770	4	A ALL VIP CARE APPLICATION 28
6	CORAL GABLES, FL 33146-1878		
7	305-230-4884	5	B PATIENT CALENDAR 73
8	TOUSSAINT@FAIRLAWATTORNEY.COM		
9	(REMOTELY VIA ZOOM)	6	C TEXT MESSAGES 105
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11	RANDY MARK GOLDBERG, ESQUIRE	8	E PLAINTIFF STATEMENT 121
12	RANDY M. GOLDBERG & ASSOCIATES, PLLC	9	F WITNESS STATEMENT 126
13	151 NW 1ST AVENUE	10	
14	DELRAY BEACH, FL 33444-2611	11	
15	754-224-0867	12	
16	RMGESQUIRE@GMAIL.COM	13	
17	(REMOTELY VIA ZOOM)	14	
18		15	
19		16	
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1	INDEX OF EXAMINATION	1	VIDEOTAPED DEPOSITION OF DIANA RAMIREZ
2	WITNESS: DIANA RAMIREZ	2	JUNE 7, 2023
3	DIRECT EXAMINATION	3	THE COURT REPORTER: We are now on the record.
4	BY TOUSSAINT MARCUS CUMMINGS, ESQUIRE	4	MR. CUMMINGS: Okay. Am I ready to go?
5	CROSS EXAMINATION	5	THE COURT REPORTER: Yes.
6	BY RANDY MARK GOLDBERG, ESQUIRE	6	MR. CUMMINGS: Did you already verify her
7	RE-DIRECT EXAMINATION	7	identification?
8	BY TOUSSAINT MARCUS CUMMINGS, ESQUIRE	8	THE COURT REPORTER: Yes.
9		9	Thereupon:
10		10	DIANA RAMIREZ
11		11	was called as a witness, and after having been first
12		12	duly sworn, testified as follows:
13		13	DIRECT EXAMINATION
14		14	BY MR. CUMMINGS:
15		15	Q Good morning, Ms. Ramirez. My name is
16		16	Toussaint Cummings. I'm the Attorney for Cruz
17		17	Valdivieso. And have you ever taken a deposition before?
18		18	A No.
19		19	Q Okay. So, let me just give you some basic
20		20	rules of a deposition. I'm sure that your Attorney
21		21	probably already explained some of them to you, but the
22		22	ones that I'm going to explain just have to be -- have
23		23	to deal with being respectful to the Court Reporter.
24		24	So, the Court Reporter is going to type down
25		25	everything that we're saying, all of my questions and

<p style="text-align: right;">Page 6</p> <p>1 then all of your answers. So, that means two things.</p> <p>2 First, we cannot speak over each other. And</p> <p>3 generally speaking, when you're having a conversation</p> <p>4 with somebody, they might start saying something and you</p> <p>5 assume you know where they're going.</p> <p>6 So, you might just, you know, cut in or start</p> <p>7 speaking or answering a question before it's done. But</p> <p>8 in this particular circumstance, you have to allow me to</p> <p>9 finish my question completely, so, that the Court</p> <p>10 Reporter can write out a full question and then you can</p> <p>11 provide your response, so that the Court Reporter can</p> <p>12 write out your full response. Understood?</p> <p>13 A Understood.</p> <p>14 Q Okay. And the reason for that is that when</p> <p>15 we're done, everything that our conversation is going to</p> <p>16 be typed up in what's called a deposition transcript,</p> <p>17 and it's going to have a clear question line, and then</p> <p>18 it's going to have a clear answer line.</p> <p>19 So, as we're talking over each other, that</p> <p>20 creates problems for the Court Reporter and her</p> <p>21 transcription. All right?</p> <p>22 A Understood.</p> <p>23 Q Second, you always have to provide a verbal</p> <p>24 response because again, the Court Reporter is typing</p> <p>25 down everything we say.</p>	<p style="text-align: right;">Page 8</p> <p>1 important thing as a witness, you understand that the</p> <p>2 Court Reporter swore you in to tell the truth today? Got</p> <p>3 it?</p> <p>4 A Absolutely, yes.</p> <p>5 Q All right. So, we're not in a Courtroom</p> <p>6 setting. You're not in front of a Judge, but the Court</p> <p>7 Reporter does administer the oath, so that you</p> <p>8 understand that you are still providing testimony as a</p> <p>9 Witness in this case, and all testimony has to be</p> <p>10 truthful. Okay?</p> <p>11 A Correct.</p> <p>12 Q All right. So, let's get started. First,</p> <p>13 what is your full name, if you have a middle name?</p> <p>14 A I don't have a middle name. My first name is</p> <p>15 Diana. Last name is Ramirez with a Z at the end.</p> <p>16 Q What is your date of birth?</p> <p>17 A It's January 20th, 1970.</p> <p>18 Q What is your current address?</p> <p>19 A It's 942 Sumter Road West in West Palm Beach.</p> <p>20 ZIP Code is 33415.</p> <p>21 Q Is Sumter spelled S-U-M-T-E-R?</p> <p>22 A That's correct, Road West.</p> <p>23 Q Sumter Road West?</p> <p>24 A Yes, because there's an east, but I'm on the</p> <p>25 West.</p>
<p style="text-align: right;">Page 7</p> <p>1 So, if I ask you a question and you shake your</p> <p>2 head, yes or no, the Court Reporter can't take down</p> <p>3 ver -- you know, non-verbal responses. So, you always</p> <p>4 have to provide a verbal response. Got it?</p> <p>5 A Okay. Understood.</p> <p>6 Q And then for that reason, you also can't say,</p> <p>7 uh-huh or um-hum because that doesn't mean anything when</p> <p>8 it's typed out, right. It looks like U-H-U-H or H-U-H</p> <p>9 or something. But that's not the same as yes or no.</p> <p>10 So, if any of those things happen, then what</p> <p>11 I'll do is I'll just say, "Okay, Ms. Ramirez, I'm just</p> <p>12 reminding you that you had to provide a verbal</p> <p>13 response." And I'll ask the question again, so that we</p> <p>14 have a clear question and answer line. Got it?</p> <p>15 A Got it.</p> <p>16 Q Okay. All right. Other than that, is there</p> <p>17 any reason why you cannot take a deposition today?</p> <p>18 A No.</p> <p>19 Q All right.</p> <p>20 A No reason.</p> <p>21 Q All right. You're not under the influence of</p> <p>22 any medications?</p> <p>23 A No medication, I don't smoke. I don't do</p> <p>24 nothing.</p> <p>25 Q Okay. No problem. And finally, the most</p>	<p style="text-align: right;">Page 8</p> <p>1 Q Oh, okay. Sumter Road West. And then Palm</p> <p>2 Beach. What was the ZIP Code again?</p> <p>3 A West Palm Beach. The ZIP Code is 33415.</p> <p>4 Q What is your current cell phone number?</p> <p>5 A It's (561) 255-6317.</p> <p>6 Q How long have you had that cell phone number?</p> <p>7 A Maybe like 10 years or over 10 years.</p> <p>8 Q Who is your current cell phone provider?</p> <p>9 A T-Mobile.</p> <p>10 Q How long have you had T-Mobile with that phone</p> <p>11 number?</p> <p>12 A I'd say maybe like three years with T-Mobile.</p> <p>13 Q Any text messages that you would've sent to</p> <p>14 Ms. Valdivieso Cruz, the Plaintiff in this case? Would</p> <p>15 they have been coming and going from this phone number?</p> <p>16 A Well, there's two phones. This is my -- the</p> <p>17 one I gave you is my personal phone. All caregivers and</p> <p>18 clients have my personal phone. It's also on my</p> <p>19 business card.</p> <p>20 And I provide that home just in case, you</p> <p>21 know, they need me for everything. If they can reach me</p> <p>22 on my on-call phone, they can always reach me on my</p> <p>23 personal phone.</p> <p>24 Because sometimes, you know, I have other</p> <p>25 calls on the on-call phone. The text messages is</p>

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1 usually done on the on-call phone, not the phone I gave  
 2 you.  
 3 **Q What is an on-call phone?**  
 4 A It's a another cell phone that we have that we  
 5 call the on-call phone.  
 6 **Q Is the On-call phone provided by All VIP to**  
 7 **you?**  
 8 A Yes.  
 9 **Q Does All VIP pay for the monthly subscription**  
 10 **for that phone?**  
 11 A Yes, sir.  
 12 **Q What is the number to the on-call phone?**  
 13 A Area code is (954) 579-0618.  
 14 **Q What's the provider for that phone?**  
 15 A I think it's T-Mobile as well. Is it  
 16 Verizon -- I think it's Verizon. I'm sorry. Verizon. The  
 17 red phone is Verizon.  
 18 **Q And did you say red phone?**  
 19 A Yeah, it's a red cell phone. We call it the  
 20 red phone.  
 21 **Q Is it an iPhone?**  
 22 A Yes, it is.  
 23 **Q When do you primarily use the red on-call**  
 24 **phone for?**  
 25 A Okay. The red on-call phone is used to send

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1 the address and information of the clients. We send all  
 2 the information to the caregivers. It provides the  
 3 address, name, phone number, full schedule and once they  
 4 get that they need to respond, confirm.  
 5 So, all those text messages are on the phone.  
 6 So, like if they say, you know, if I see that they don't  
 7 respond, I call them, "Did you get the message and can  
 8 you, please confirm?"  
 9 And that's how we have proof that they got the  
 10 message that, you know, they can't say, "Oh, I didn't  
 11 receive it, you know, I don't know the address, you  
 12 know, I don't know the phone."  
 13 **Q Okay.**  
 14 A All the information is sent through that  
 15 phone.  
 16 **Q Now, just let me be clear, when you -- all of**  
 17 **the information that you're talking about is going to**  
 18 **the client or is going to the Home Health Aid providers?**  
 19 A Yeah.  
 20 **Q To caregivers?**  
 21 A To the Home Health. Yes, that's correct.  
 22 **Q How do you communicate with the patients?**  
 23 A I call them, the -- if it is during business  
 24 hours, I call them on the office phone. If it's not  
 25 during business hours, I call them -- usually I call

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1 them through my cell phone, you know, or it depends if  
 2 they, you know, call me on the red phone, which is the  
 3 on-call phone, I will return the call there, so they  
 4 know that I'm returning their call. But most clients  
 5 have both numbers.  
 6 **Q Understood.**  
 7 A So, that way they can't say, "Oh, I tried  
 8 reaching you and the call didn't go through." So, they  
 9 had my other number.  
 10 **Q Understood. How long have you been working**  
 11 **with All VIP?**  
 12 A I'll be working -- I've been -- it's going to  
 13 be four years in July 9th, I'll be four years.  
 14 **Q Where did you work before All VIP?**  
 15 A I worked -- my last job was in International  
 16 Kids Zone.  
 17 **Q What is that?**  
 18 A It's after school and it's also a daycare.  
 19 **Q What did you do there?**  
 20 A I was an assistant teacher.  
 21 **Q How long did you work for International Kids**  
 22 **Zone?**  
 23 A I'd say like about three years.  
 24 **Q Have you ever been convicted of any crimes**  
 25 **after the age --**

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1 A Never.  
 2 **Q -- of 18?**  
 3 A Never in my life.  
 4 **Q Have you ever been a Plaintiff in a lawsuit?**  
 5 A Never.  
 6 **Q Meaning, have you ever sued anybody yourself?**  
 7 A The only thing that I can say that I've been  
 8 in Court that I had to, you know, testify was when some  
 9 girl scratched my car and the police officer saw her.  
 10 So, they told me if I wanted to, you know,  
 11 press charges and I said, yes. That was the only time  
 12 that you know that I had to testify in Court.  
 13 **Q How long ago was that?**  
 14 A I'd say that was probably like 10 years around  
 15 there, I can't -- just estimating.  
 16 **Q And you actually provided testimony in Court?**  
 17 A Yeah, I actually, yes, I had to testify and  
 18 all the works Jury, there was a Jury as well.  
 19 **Q And you didn't take a deposition before you**  
 20 **provided that testimony?**  
 21 A What do you mean? It was a State that took  
 22 the case and while he's the Attorney, the State Public  
 23 Defender.  
 24 **Q Right.**  
 25 A He just asked me questions and that's it. I

<p style="text-align: right;">Page 14</p> <p>1 don't --</p> <p>2 <b>Q Understood. All right. And have you ever</b></p> <p>3 <b>been sued by anybody before?</b></p> <p>4 A Never.</p> <p>5 <b>Q What are -- what is your current title at All</b></p> <p>6 <b>VIP?</b></p> <p>7 A Administrator.</p> <p>8 <b>Q Sorry, I'm sorry, I cut you off. Let me just</b></p> <p>9 <b>ask the question. I'll re-ask the question. Hold on.</b></p> <p>10 <b>What is your current title at All VIP?</b></p> <p>11 A I'm the administrator.</p> <p>12 <b>Q What title did you start with at All VIP four</b></p> <p>13 <b>years ago?</b></p> <p>14 A Coordinator.</p> <p>15 <b>Q Have you had any other positions at All VIP</b></p> <p>16 <b>besides coordinator and administrator?</b></p> <p>17 A Those are the only two.</p> <p>18 <b>Q When did you become an administrator for All</b></p> <p>19 <b>VIP?</b></p> <p>20 A I'd say maybe like in two -- the end of 2019,</p> <p>21 around there.</p> <p>22 <b>Q And is it fair to say that you started with</b></p> <p>23 <b>All VIP in the beginning of 2019 since you've been</b></p> <p>24 <b>working there for four years?</b></p> <p>25 A July 9th, if I'm not mistaken.</p>	<p style="text-align: right;">Page 16</p> <p>1 finalize and that's how they do payroll.</p> <p>2 <b>Q And what was the other system you referred to?</b></p> <p>3 A The other one we started was Care Center, but</p> <p>4 we were very, you know, we didn't work there with them</p> <p>5 for a long time. The one that we've been with after</p> <p>6 that is HHA exchange. We've been then with them for</p> <p>7 quite a while after that.</p> <p>8 <b>Q You also mentioned that you started Care as a</b></p> <p>9 <b>coordinator. What did you mean by that?</b></p> <p>10 A Sorry?</p> <p>11 <b>Q I think you -- when I asked you what your</b></p> <p>12 <b>duties were as a coordinator, you said that you started</b></p> <p>13 <b>Care. What did you mean by that?</b></p> <p>14 A No staff, I'm sorry. No, I said staffed --</p> <p>15 <b>Q Staff the client.</b></p> <p>16 A Staffed the clients, yeah.</p> <p>17 <b>Q With caregivers, right?</b></p> <p>18 A Yes.</p> <p>19 <b>Q And then I thought you said you started Care.</b></p> <p>20 <b>You didn't say that?</b></p> <p>21 A No.</p> <p>22 <b>Q No. Okay. All right.</b></p> <p>23 A No.</p> <p>24 <b>Q Now, as an administrator, what do you do at</b></p> <p>25 <b>All VIP?</b></p>
<p style="text-align: right;">Page 15</p> <p>1 <b>Q July 9th, 2019?</b></p> <p>2 A 2019.</p> <p>3 <b>Q You definitely started at All VIP before the</b></p> <p>4 <b>pandemic?</b></p> <p>5 A Yes.</p> <p>6 <b>Q What were your duties as a coordinator for All</b></p> <p>7 <b>VIP?</b></p> <p>8 A I staffed clients with caregivers. I also did</p> <p>9 start of care. I, you know, answered phones, entered</p> <p>10 their hours in the system.</p> <p>11 <b>Q When you say entered their hours, who are you</b></p> <p>12 <b>referring to?</b></p> <p>13 A Caregivers. Sorry.</p> <p>14 <b>Q No problem. And what system are you referring</b></p> <p>15 <b>to?</b></p> <p>16 A Well, we had two diff -- couple of different</p> <p>17 software. When I started with, WellSky.</p> <p>18 <b>Q Sorry, can you spell that for me?</b></p> <p>19 A WellSky, it's W-E-L-L and S-K-Y, WellSky.</p> <p>20 <b>Q What does that program or application do?</b></p> <p>21 A It does the schedule, so we know who are we</p> <p>22 scheduling. We entered the caregiver's name into the</p> <p>23 client's schedule, their hours and that's how they run</p> <p>24 payroll.</p> <p>25 Once all that is entered, you know, they</p>	<p style="text-align: right;">Page 17</p> <p>1 A As administrator, I do all that, but I, you</p> <p>2 know, I have to take care of ev -- there's any issues,</p> <p>3 any problems with the, you know, with the hours.</p> <p>4 Got to fix errors, I got to go visit the</p> <p>5 clients. I call the clients to make sure, you know,</p> <p>6 how's the caregiver working out, you know, making sure</p> <p>7 everything's working properly, how it's supposed to.</p> <p>8 <b>Q And are you in control of a certain regional</b></p> <p>9 <b>area that All VIP has?</b></p> <p>10 A Yes, I am the administrator for the Broward</p> <p>11 County area here for All VIP Care.</p> <p>12 <b>Q And are you presently located at an All VIP</b></p> <p>13 <b>office as you're taking this deposition?</b></p> <p>14 A Yes, I am. I am at the Broward office.</p> <p>15 <b>Q So, if you -- let's talk about the hiring</b></p> <p>16 <b>process for Caregivers. How does a caregiver begin to</b></p> <p>17 <b>work with All VIP?</b></p> <p>18 A Okay. Once they come in, they have to bring</p> <p>19 all their, you know, paperwork, all their CEUs all their</p> <p>20 certifications that includes a physical and a background</p> <p>21 check.</p> <p>22 If they don't have one, we will, you know, do</p> <p>23 a form for them. We'll fill it out and send them to</p> <p>24 have one, you know, to have one done. Once they're</p> <p>25 here, they're not active unless they have all the</p>

<p style="text-align: right;">Page 18</p> <p>1 paperwork and they have all the certifications and their</p> <p>2 background, it's, you know, it's good to go.</p> <p>3 Once they fill out the application, I go over</p> <p>4 everything. You know, there's like 26, if I'm not</p> <p>5 mistaken 26 pages in our application. I think there's</p> <p>6 probably a little bit more now.</p> <p>7 And I go through them and I say, if you don't</p> <p>8 understand anything, you know, just let me know and I'll</p> <p>9 explain to you. When they don't understand something,</p> <p>10 you know, they ask me, can I explain to them because</p> <p>11 there's a lot of initials and also signatures.</p> <p>12 They're independent contractors, you know, let</p> <p>13 them know what an independent contractor is. Most of</p> <p>14 them, they already know.</p> <p>15 Once we go over that, I let them know that</p> <p>16 once they accept a case, you know, I'm -- excuse me,</p> <p>17 sorry, I let them know how they need to be dressed when</p> <p>18 they go to a client's room, they have to have their</p> <p>19 scrubs done.</p> <p>20 They have to, you know, be well dressed with</p> <p>21 closed-toe shoes and be there on time. So, that's one</p> <p>22 of the first things that we tell them to be there on</p> <p>23 time and properly dressed.</p> <p>24 And after that, you know, once they, you know,</p> <p>25 they understand everything, the application, how they're</p>	<p style="text-align: right;">Page 20</p> <p>1 A That's correct.</p> <p>2 <b>Q At what point in the process is the background</b></p> <p>3 <b>check conducted?</b></p> <p>4 A As soon as they walk in, they give us, you</p> <p>5 know, all their CEUs and we're -- that's the first thing</p> <p>6 we do, background check before they even, you know,</p> <p>7 finish their application.</p> <p>8 <b>Q How what components are there to the</b></p> <p>9 <b>background check, is there a credit check that goes into</b></p> <p>10 <b>that?</b></p> <p>11 A No, there's no credit checks.</p> <p>12 <b>Q What are you looking for when a background</b></p> <p>13 <b>check --</b></p> <p>14 A Criminal.</p> <p>15 <b>Q Does the State require that All VIP run a</b></p> <p>16 <b>background check on caregivers?</b></p> <p>17 A That's correct.</p> <p>18 <b>Q Does the State --</b></p> <p>19 MR. GOLDBERG: Mr. Cummings, excuse one</p> <p>20 second, just for clarification. Like we discussed</p> <p>21 yesterday, you're referring to caregiver. Are we</p> <p>22 referring that the caregiver is an HHA?</p> <p>23 MR. CUMMINGS: Well --</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. CUMMINGS: I mean, let me clarify that</p>
<p style="text-align: right;">Page 19</p> <p>1 supposed to be addressed, how once they accept a case,</p> <p>2 if I tell them if you're -- if you can't make it, I --</p> <p>3 there's an on-call phone after hours, you need to</p> <p>4 immediately call me.</p> <p>5 It doesn't matter what time you call me and</p> <p>6 let me know, I cannot make it. I had an emergency that</p> <p>7 gives me time to call the client and find another</p> <p>8 Caregiver for that client. So, that communication,</p> <p>9 that's the number one thing I tell them. It's very,</p> <p>10 very important with All VIP Care.</p> <p>11 <b>Q So, let me just go through some of the things</b></p> <p>12 <b>you said -- you mentioned CEUs. What does that stand</b></p> <p>13 <b>for?</b></p> <p>14 A Those are their certifications.</p> <p>15 <b>Q Okay. And those certifications are</b></p> <p>16 <b>certifications that caregivers should already have</b></p> <p>17 <b>before they start practicing for All VIP or working with</b></p> <p>18 <b>all --</b></p> <p>19 A That's correct. Yeah, they go to office --</p> <p>20 <b>Q -- got it. Okay. Those are all State</b></p> <p>21 <b>certifications?</b></p> <p>22 A Yes, they are. They have to be, yes. And we</p> <p>23 verify them online to make sure.</p> <p>24 <b>Q Does All VIP also conduct a background check</b></p> <p>25 <b>on the caregivers?</b></p>	<p style="text-align: right;">Page 21</p> <p>1 really quickly though.</p> <p>2 BY MR. CUMMINGS:</p> <p>3 <b>Q When you -- Ms. Ramirez, when you refer to a</b></p> <p>4 <b>caregiver, what specifically are you -- what types of</b></p> <p>5 <b>caregivers does All VIP work with?</b></p> <p>6 A They'll be HHAs, CNAs and then we also have</p> <p>7 nurses, but they're -- that's what they call RNs.</p> <p>8 <b>Q All right.</b></p> <p>9 A HHA will be --</p> <p>10 <b>Q And so,</b></p> <p>11 A -- A home -- I'm sorry.</p> <p>12 <b>Q No, go ahead.</b></p> <p>13 A And HHA is a Home Health Aide. CNA is a</p> <p>14 Certified Nurse Assistant.</p> <p>15 <b>Q And RN is a Registered Nurse?</b></p> <p>16 A That's correct.</p> <p>17 <b>Q All VIP works with all three different types</b></p> <p>18 <b>of those caregivers?</b></p> <p>19 A That's correct.</p> <p>20 <b>Q Okay. So, for right now, when we refer to</b></p> <p>21 <b>caregiver, I'm just going to refer generally to all</b></p> <p>22 <b>three, but at some point later in the deposition, I'll</b></p> <p>23 <b>ask you probably specifically about one or the other of</b></p> <p>24 <b>those types. Okay?</b></p> <p>25 A Okay.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q All right. But as far as the background check</p> <p>2 is concerned, or let me be more specific, as far as the</p> <p>3 hiring process for caregivers is concerned, it's the</p> <p>4 same whether the person is coming in as a HHA, a CNA or</p> <p>5 an RN?</p> <p>6 A That's correct. They all have to have</p> <p>7 background checks, even myself.</p> <p>8 Q All right. And do the caregivers all have the</p> <p>9 same certifications no matter what, if they're HHA a</p> <p>10 CR -- a CNA and RN?</p> <p>11 A No, they don't. No, HHA would have, you know,</p> <p>12 just her regular certifications that it's not a license,</p> <p>13 it's just certificates, you know, that they took the</p> <p>14 class and they took the training and it's 75 hours that</p> <p>15 they need. A Registered Nurse -- I mean, a CNA has her</p> <p>16 license.</p> <p>17 Q Okay.</p> <p>18 A You'll be, you know, Certified Nurse</p> <p>19 Assistant.</p> <p>20 Q Got it. So, one thing I just want to remind</p> <p>21 you of, Ms. Ramirez, is you have to allow me to finish</p> <p>22 the question because --</p> <p>23 A I'm sorry.</p> <p>24 Q I already said you already started jumping</p> <p>25 ahead because you, like I said --</p>	<p style="text-align: right;">Page 24</p> <p>1 Q Okay. Does All VIP provide a certain type of</p> <p>2 scrub to the caregivers?</p> <p>3 A No, they could wear any scrub. I usually tell</p> <p>4 them you could wear any color as long as they're scrubs,</p> <p>5 you know, they can buy it, whichever, don't they, like.</p> <p>6 Q Does All VIP sell scrubs?</p> <p>7 A No, we don't.</p> <p>8 Q Does All VIP tell caregivers where they can</p> <p>9 buy scrubs?</p> <p>10 A No, I'm sorry, let me -- let -- can I go back</p> <p>11 on that?</p> <p>12 Q Yeah, sure. You do whatever you want.</p> <p>13 A Okay. When they ask me, yes, I tell them, but</p> <p>14 you -- most of them, they come already -- when they come</p> <p>15 to apply, they have their scrubs.</p> <p>16 Q And is there any requirement that a home --</p> <p>17 I'm sorry, a caregiver have a certain number set of</p> <p>18 scrubs, like you need to have a different one for every</p> <p>19 day of the week or no?</p> <p>20 A No, we don't tell them.</p> <p>21 Q All right. And then you also mentioned that</p> <p>22 there's an on-call phone for after hours. Is that the</p> <p>23 same as the red phone that we spoke about earlier?</p> <p>24 A Yes.</p> <p>25 Q And so --</p>
<p style="text-align: right;">Page 23</p> <p>1 A I'm sorry.</p> <p>2 Q No, don't worry about it. Like, you know</p> <p>3 where the question is going. So, when I get to the end,</p> <p>4 you're kind of cutting me off a little bit.</p> <p>5 A I'm sorry.</p> <p>6 Q All right. So, just allow me to finish the</p> <p>7 question. Thank you. Otherwise, the Court Reporter's</p> <p>8 going to jump on us. All right.</p> <p>9 A Okay. I'm sorry.</p> <p>10 Q So, no problem. Okay. So, you also mentioned</p> <p>11 the dress code is -- does the State require that</p> <p>12 caregivers dress a certain way when they provide care in</p> <p>13 a home?</p> <p>14 A I don't know about the State, but I know we as</p> <p>15 a Home Health Agency and most of the Home Health Agency</p> <p>16 requires for the aide -- caregivers to wear their scrubs</p> <p>17 and closed toe shoes.</p> <p>18 Q What's the purpose of that?</p> <p>19 A A lot of clients identifies them when they go</p> <p>20 visit, you know, a client's home.</p> <p>21 Q And --</p> <p>22 A And it also repre -- sorry.</p> <p>23 Q Sorry, go ahead. No, you're --</p> <p>24 A And it also represents, you know, that they</p> <p>25 are, you know, caregivers and they represent the agency.</p>	<p style="text-align: right;">Page 25</p> <p>1 A Yes, that's correct.</p> <p>2 Q If you tell the caregivers at the time of the</p> <p>3 application signing about the process for make an on-</p> <p>4 call -- I'm sorry, for calling in if they can't make</p> <p>5 particular patient's schedule or something?</p> <p>6 A Yes, through the red phone, yes.</p> <p>7 Q Okay. All right. Now, do you speak Spanish?</p> <p>8 A Yes, I do.</p> <p>9 Q Does All VIP work with a large number of</p> <p>10 Spanish speaking caregivers?</p> <p>11 A Yes, we do. It's -- I think it's a balance.</p> <p>12 Q Balance between what?</p> <p>13 A English and Creole and Spanish.</p> <p>14 Q Do you speak Creole?</p> <p>15 A No, I don't.</p> <p>16 Q If Creole speaking caregiver comes into the</p> <p>17 office, how is the application process explained to</p> <p>18 them?</p> <p>19 A Okay. They -- if they don't understand</p> <p>20 English, they usually come with someone that understands</p> <p>21 English.</p> <p>22 Q Are there any Creole speaking staff members in</p> <p>23 your Broward office?</p> <p>24 A Yes, I have one Creole client.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q Client?</p> <p>2 A Yes, client I'm sorry.</p> <p>3 Q No, I'm not staff members. Do you have any</p> <p>4 Creoles --</p> <p>5 A Staff members.</p> <p>6 Q -- Staff members?</p> <p>7 A No, I don't.</p> <p>8 Q And the -- let me just -- you mentioned a</p> <p>9 26-page application that caregivers fill out when they</p> <p>10 first come in to apply for jobs, correct?</p> <p>11 A That's correct.</p> <p>12 Q Okay. That 26 page application, what language</p> <p>13 is it in</p> <p>14 A English.</p> <p>15 Q Is there a Spanish language version of that</p> <p>16 application?</p> <p>17 A No, there's not.</p> <p>18 Q If a Spanish speaking caregiver comes in, how</p> <p>19 do they fill out the application if they don't -- if</p> <p>20 they don't read or write English?</p> <p>21 A Okay. So, this is where I come in, everything</p> <p>22 is explained to them. The first page is very, you know,</p> <p>23 they know how to name, address, you know, last, you</p> <p>24 know, everything is self, like they know how to fill</p> <p>25 that part out.</p>	<p style="text-align: right;">Page 28</p> <p>1 apply?</p> <p>2 A Yes, I was.</p> <p>3 Q Did you call --</p> <p>4 A I was the one that took --</p> <p>5 Q Okay. Sorry, go ahead.</p> <p>6 A I'm sorry. Yes, I was the one that helped</p> <p>7 her.</p> <p>8 Q Okay. And let me just show you what I'm going</p> <p>9 to mark as Exhibit A for the deposition record.</p> <p>10 (Thereupon, Plaintiff's Exhibit A was entered</p> <p>11 into the record.)</p> <p>12 BY MR. CUMMINGS:</p> <p>13 Q Okay. Ms. Ramirez, can you see the document</p> <p>14 I'm showing you on my screen now?</p> <p>15 A Yes, that's the application. That's the first</p> <p>16 part of the application.</p> <p>17 Q So, just for a deposition record, I'm now</p> <p>18 introducing a 25-page document, and at the bottom it has</p> <p>19 as Exhibit A, it has Bates stamp, All VIP 26 letter A,</p> <p>20 and then 000001.</p> <p>21 And this goes all the way down to Bates stamp,</p> <p>22 the same Bates stamp. But the --</p> <p>23 A That's the last page.</p> <p>24 Q Yeah, the last page says number 25. Okay. So,</p> <p>25 is this the -- are these 25 pages the full application</p>
<p style="text-align: right;">Page 27</p> <p>1 Now, the part that they -- it's the reading</p> <p>2 part that they have to initial, I explain to them each</p> <p>3 paragraph. Okay. Where they have to initial because</p> <p>4 they do tell me. Okay.</p> <p>5 I don't understand this part. And that's why</p> <p>6 I explained to them. If they agree, then they initial</p> <p>7 that step by step by step, I go through it all the way</p> <p>8 to, you know, to the end after the first page.</p> <p>9 Q And, how long does it normally take when you</p> <p>10 are sitting with a Spanish speaking caregiver to explain</p> <p>11 the whole 26 application?</p> <p>12 A I say about an hour.</p> <p>13 Q If the caregiver reads and writes and</p> <p>14 understands English, do you still provide input to them</p> <p>15 during the application process?</p> <p>16 A Yes, if they are -- like, if they can't</p> <p>17 understand a certain, you know, question from there,</p> <p>18 then I explain to them authority. But they usually</p> <p>19 understand.</p> <p>20 Q Do you know who Cruz Valdivieso is?</p> <p>21 A Yes, I do.</p> <p>22 Q Did Cruz Valdivieso apply to work with All VIP</p> <p>23 at the Broward office?</p> <p>24 A Yes, she came to the Broward office.</p> <p>25 Q Were you present the day that she came in to</p>	<p style="text-align: right;">Page 29</p> <p>1 that you were referring to earlier?</p> <p>2 A Yes, it should have been 26. Let me see.</p> <p>3 Q Yes, I mean --</p> <p>4 A It's probably another -- can you go up a</p> <p>5 little?</p> <p>6 Q Yeah, this is the first page.</p> <p>7 A Okay. I see.</p> <p>8 Q And then the second page that we're looking at</p> <p>9 in this Exhibit A is this generally the start of a</p> <p>10 different part of the application.</p> <p>11 A That's the second page. And then it goes to</p> <p>12 another -- it's employment history.</p> <p>13 Q Okay.</p> <p>14 A There's another employment history I think,</p> <p>15 missing in there.</p> <p>16 Q So, you think there's just one page missing</p> <p>17 somewhere here?</p> <p>18 A Yeah, I think it's an employment history.</p> <p>19 Q Okay.</p> <p>20 A It's like --</p> <p>21 Q Where -- sorry, go ahead.</p> <p>22 A Can you go to the -- that next page?</p> <p>23 Q Um-hum.</p> <p>24 A There you go. No, that's the page.</p> <p>25 Q When you say that's the page, are you saying</p>

<p style="text-align: right;">Page 30</p> <p>1 there's a page missing somewhere in here or --</p> <p>2 A I thought there was another page missing, like</p> <p>3 for employment history, but I saw it there.</p> <p>4 Q You did see it. Okay. Well, we can go</p> <p>5 through these pages later, but do you think --</p> <p>6 A Okay.</p> <p>7 Q I know I haven't showed you all 25 pages, but</p> <p>8 at this point up to page 4, have you seen any part of</p> <p>9 the application that's missing?</p> <p>10 A Let's see if -- no, not the first part. Not</p> <p>11 the first part that I recall.</p> <p>12 Q Okay. And then moving down to page 5, which</p> <p>13 says acknowledge --</p> <p>14 A -- sorry, yeah --</p> <p>15 Q -- policy and procedure?</p> <p>16 A That's correct.</p> <p>17 Q Okay. Would this sort of be considered like</p> <p>18 the second part of the application?</p> <p>19 A Yes, because there's a few of them and also</p> <p>20 reading parts, it doesn't have initials.</p> <p>21 Q Okay. So, there are some pages that, where</p> <p>22 there's no initial required?</p> <p>23 A Yeah, it is just for them to have that, you</p> <p>24 know, so if they have any doubt, they have their copies.</p> <p>25 Q All right.</p>	<p style="text-align: right;">Page 32</p> <p>1 but what I'm saying is when you joined All VIP as an</p> <p>2 employee, did this whole application package already</p> <p>3 exist or did you create any parts?</p> <p>4 A No, it already existed. I didn't create</p> <p>5 anything.</p> <p>6 Q Okay. And so, when Ms. Cruz Valdivieso came</p> <p>7 in, you're saying that you explained what this first</p> <p>8 page says to her and then you asked her to sign it?</p> <p>9 A I told her after everything is explained, she</p> <p>10 signed it and she was sitting down, I remember the day</p> <p>11 that she came in her blue -- navy blue scrubs, she came</p> <p>12 and then I said, she says, can you explain to me, and</p> <p>13 step-by-step I explained to her.</p> <p>14 And if as -- if she agreed, she will initial</p> <p>15 and she'll sign -- initial and she'll sign and then --</p> <p>16 Q Yeah, when you say step-by-step, so let's just</p> <p>17 stick with the first page that we're looking at here,</p> <p>18 which says All VIP Care and it has a stethoscope and the</p> <p>19 shape of a heart.</p> <p>20 Do you read the English parts directly into</p> <p>21 Spanish or do you just give a general overview of like</p> <p>22 what this says?</p> <p>23 A If it's not long like, you know, I explain to</p> <p>24 them exactly how it's, I read it in English, I read it</p> <p>25 in Spanish to them.</p>
<p style="text-align: right;">Page 31</p> <p>1 A Of what they had just finished signing.</p> <p>2 Q Is there any part of the application that</p> <p>3 we're looking at that would be filled out by you?</p> <p>4 A Yes, where it says administrator.</p> <p>5 Q Okay. What page would I find that on?</p> <p>6 A Can -- no, can you go up, after the initials,</p> <p>7 up more?</p> <p>8 Q Well, when you say up, do you mean downward --</p> <p>9 down?</p> <p>10 A No, like you're going just like that, upward.</p> <p>11 Q All right. And let me just ask you a question</p> <p>12 quickly. So, this -- when Ms. Cruz came in, everything</p> <p>13 on this first page is all in English, but I think you</p> <p>14 mentioned that all of the caregivers know what this</p> <p>15 means. How do you know that?</p> <p>16 A I have to explain to them this is a contract</p> <p>17 and they cannot lie. You know, they cannot give any</p> <p>18 false information and it's a contract.</p> <p>19 Q When you joined All VIP, did this first page</p> <p>20 already exist to Exhibit A?</p> <p>21 A When I first applied. No because our</p> <p>22 application is similar to that, but it didn't have that</p> <p>23 because that's for independent contractor. I'm not an</p> <p>24 independent contractor.</p> <p>25 Q No, I'm asking a slightly different question,</p>	<p style="text-align: right;">Page 33</p> <p>1 Q Okay. So, meaning like if it says, "Dear</p> <p>2 Independent Contractor", you'll say what then?</p> <p>3 A I'll tell them you're independent contractor,</p> <p>4 that'll be you. I'll explain to them the independent</p> <p>5 contractor because like I said, there's two signatures</p> <p>6 required independent contractor and me.</p> <p>7 So, a lot -- a few of them get confused with</p> <p>8 that signing part. So, I tell them you'll be the</p> <p>9 independent contractor.</p> <p>10 Q Right. And when you said you explain what an</p> <p>11 independent contractor is, what do you tell them an</p> <p>12 independent contractor is?</p> <p>13 A Independent -- I let them know that, you know,</p> <p>14 taxes are not withheld. They are responsible to pay</p> <p>15 their own taxes.</p> <p>16 And if they -- let's say they're, you know, if</p> <p>17 they decide to work in another agency, you know, they</p> <p>18 are independent contractors. They could apply in other</p> <p>19 agencies. A lot of the caregivers do that.</p> <p>20 Q Can you explain anything else about their</p> <p>21 roles as independent contractors to them?</p> <p>22 A Everything that has pertains to independent</p> <p>23 contractor is explained to them and like, I told you in</p> <p>24 that sense. So, most of them when they come in, they</p> <p>25 know what it is because it is taught to them in the</p>

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1 school. And also they apply in other agencies and all  
 2 the agents -- huh?  
 3 **Q Yes. Did Cruz Valdivieso say that she learned**  
 4 **what an independent contractor is during schooling or**  
 5 **during her training?**  
 6 A Yes, a lot of them they do know from school.  
 7 **Q Okay.**  
 8 A Yeah, they always come and tell me. Yes, I  
 9 know, it was explained to us in school.  
 10 **Q Did Ms. Cruz Valdivieso say specifically, do**  
 11 **you remember her saying that she knows what an**  
 12 **independent contractor is?**  
 13 A Yes, because she had applied in all the  
 14 agencies. She said, she had experience and that's why  
 15 the work history is required. And also in the  
 16 background check, it lets me know what other agencies  
 17 she applied for.  
 18 **Q Now, when we move down to page 2 of the**  
 19 **employment application, do you read all of these parts,**  
 20 **like where it says section 1, section 2, section 3. Do**  
 21 **you -- did you read that to Ms. Valdivieso in Spanish**  
 22 **also?**  
 23 A When you say section 1, section 2 and section  
 24 3, what?  
 25 **Q Well, I'm just looking under -- on page 2**

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1 here, there's a -- I'll highlight it. It says section  
 2 1, contact information and then section 2, desired  
 3 employment or contract. So, I'm just referring to these  
 4 sections like do you --  
 5 A Okay.  
 6 **Q Yeah. How do you tell Ms. Cruz, you know,**  
 7 **what to fill in, in each one of these parts, since it's**  
 8 **in English?**  
 9 A Yeah, I told her to -- she says that, she went  
 10 to school in Venezuela and I told her, put in your --  
 11 all the school that you went to from HHA, it looks like  
 12 she didn't even put it there.  
 13 **Q Okay. And what I'm trying to figure out is,**  
 14 **are you literally saying to her, okay. In -- are you**  
 15 **saying to her in Spanish, put your last name here, put**  
 16 **your first name here. Are you walking her through this**  
 17 **whole application in Spanish?**  
 18 A Yes.  
 19 **Q All right. Now, moving down to page 5 where**  
 20 **we get into the Acknowledgement of Nurse Registry Policy**  
 21 **and Procedure would you agree that this starts -- the**  
 22 **application starts to become legal at this point?**  
 23 A Yes, that part.  
 24 **Q All right. And so --**  
 25 A But the whole --

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1 **Q Go ahead.**  
 2 A The whole application will be the whole  
 3 contract because even the first page as you see it --  
 4 it's stating, you know, that it's a contract and any  
 5 false information, you know.  
 6 **Q Right. And so, getting back to this page that**  
 7 **I'm showing you now, page 5 where it says**  
 8 **"Acknowledgement of Nurse Registry Policy and**  
 9 **Procedure." For example, the first box says**  
 10 **confidentiality statement.**  
 11 **What I want to know is, do you read this**  
 12 **confidentiality statement verbatim in Spanish as a**  
 13 **translation?**  
 14 A I don't read the whole thing in Spanish to  
 15 them. I summarize, you know, that part I summarize and  
 16 explain to them, you know, how -- what it says on each  
 17 one of them.  
 18 **Q Understood. And then after you summarize, you**  
 19 **ask the person who's applying to initial?**  
 20 A Yeah, if she agrees to it.  
 21 **Q Okay.**  
 22 A If she -- doesn't agree, then she needs -- if  
 23 she doesn't agree, then we can't hire her.  
 24 **Q Understood. All right. And so, just to get**  
 25 **an idea, Ms. Cruz would've come in once you get to page**

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1 5, you summarize the confidentiality statement and then  
 2 you say to her initial here if you agree?  
 3 A Yes, if you agree initial.  
 4 **Q Okay. Then you move down to the next box, tax**  
 5 **exempt status. You summarize that in Spanish and then**  
 6 **say initial here if you agree?**  
 7 A Of course she doesn't agree, then she don't  
 8 sign it -- she don't initial it.  
 9 **Q Right. I'm just trying to get the flow of how**  
 10 **it goes. So, you ex -- you summarize each box in**  
 11 **Spanish and then have her initial, correct?**  
 12 A Yeah, and then she initials I said, you agree  
 13 initial.  
 14 **Q Okay. Then you move to the next one and do**  
 15 **the same thing?**  
 16 A Yes.  
 17 **Q Okay. And then that's on and on until all of**  
 18 **the initial one is done on the application.**  
 19 A And then -- I'm sorry, can you move. Yeah,  
 20 that part where it says conduct -- code of conduct that  
 21 is explained, you know, one-by-one completely  
 22 performance, all that.  
 23 **Q Understood. Okay. Is there a part on the**  
 24 **application where it explains what you were saying about**  
 25 **calling in to give advanced notice, if the person is --**

<p style="text-align: right;">Page 38</p> <p>1 if the caregiver will be out?</p> <p>2 A If there's a part there in the application?</p> <p>3 Q Yeah. I didn't know if you were just saying</p> <p>4 you tell the caregiver that verbally or if it's actually</p> <p>5 contained in the application --</p> <p>6 A -- no, I tell them verbally, this is something</p> <p>7 that I tell them verbally.</p> <p>8 Q Okay. And just to remind you again,</p> <p>9 Ms. Ramirez, please let me finish the question because</p> <p>10 we're talking over each other a lot. Okay?</p> <p>11 A I'm sorry.</p> <p>12 Q All right. Okay. So, and you say you remember</p> <p>13 when Ms. Valdivieso came into the office the day of?</p> <p>14 A I'm sorry?</p> <p>15 Q You remember the first day Ms. Valdivieso --</p> <p>16 Ms. Cruz Valdivieso came into the office to apply?</p> <p>17 A Yes, and she came more than once.</p> <p>18 Q Why was that?</p> <p>19 A She always had, like questions -- wanted. She</p> <p>20 was like desperate. "I need a case. I need a case."</p> <p>21 so she didn't let us call her. She came to the office,</p> <p>22 you know, "What do you guys have I need, you know, I</p> <p>23 need a case. That means, I need you know, work."</p> <p>24 Q Now, the first time that Ms. Cruz Valdivieso</p> <p>25 came into your Broward office, did she finish the whole</p>	<p style="text-align: right;">Page 40</p> <p>1 you walked in Ms. Cruz through this application, but was</p> <p>2 it in fact Ms. Perez that did the application with her?</p> <p>3 A No, she was -- Janati was with me, but she was</p> <p>4 not explaining the application to her. Once the</p> <p>5 application is filled out and she's explained, then once</p> <p>6 Janati puts it in the system, she has the authority to</p> <p>7 sign as well. But Janati was there as well when we were</p> <p>8 doing the interview for Valdivieso. We were both there.</p> <p>9 Q Why isn't your name on it?</p> <p>10 A Because she had -- I was probably doing</p> <p>11 something else and it's the same thing she could sign,</p> <p>12 you know, she's authorized to sign.</p> <p>13 Q So, it doesn't matter if you sign or if Janati</p> <p>14 signs this page?</p> <p>15 A Yeah, as long as we have -- yeah, as long as</p> <p>16 we have, you know, we're authorized to do so.</p> <p>17 Q And what is the purpose of this Appendix A</p> <p>18 page number 16?</p> <p>19 A You can go up.</p> <p>20 Q This one?</p> <p>21 A Oh, that's for RN, LPN and HHA. Just, you</p> <p>22 know, if they were referred by someone.</p> <p>23 Q It says Appendix A, Independent Contractor</p> <p>24 Payment Schedule?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 application process at that time?</p> <p>2 A The entire application that they can't leave</p> <p>3 without filling out the entire application.</p> <p>4 Q Right. And you said she came more than once.</p> <p>5 I didn't know if you meant that she came more than once</p> <p>6 to fill out to do the application?</p> <p>7 A No, just to ask for employment, you know, if</p> <p>8 we have any cases, some of them do that. What cases do</p> <p>9 you have available? That I can work, yeah. So, I've</p> <p>10 met her many times.</p> <p>11 Q Understood. Now, when we look at page 15, I</p> <p>12 see that there's a signature from authorized VIP</p> <p>13 representative and it looks like the name is Janati</p> <p>14 Perez. Who is that?</p> <p>15 A Yeah, Janati was the coordinator at that time.</p> <p>16 She also knew we call her -- I'm sorry if I call her</p> <p>17 Daisy because that's the name she gave us, you know,</p> <p>18 that her name was Daisy and that she preferred to be</p> <p>19 called Daisy.</p> <p>20 Q And when you say she, you're talking about</p> <p>21 Cruz Valdivieso?</p> <p>22 A Yes, and I told her, is that your legal name</p> <p>23 because it says Cruz. She says, I go by Daisy I'd</p> <p>24 rather for you to call me Daisy.</p> <p>25 Q Understood. Now, my understanding was that</p>	<p style="text-align: right;">Page 41</p> <p>1 Q So, you're saying that this is about whether</p> <p>2 or not -- is there information that's missing here?</p> <p>3 A No, that you'll be certain -- where it says --</p> <p>4 at the bottom where it says HHA, CNA, Homemaker and</p> <p>5 Companion that says next to it says referral to facility</p> <p>6 agency or Healthcare entity.</p> <p>7 Q Right. Yeah, there's nothing in those boxes.</p> <p>8 So, it is something missing or --</p> <p>9 A Yes, she doesn't -- she didn't do private</p> <p>10 hours.</p> <p>11 Q What does that mean private hours?</p> <p>12 A Like she didn't work with like a private case</p> <p>13 that didn't have Medicaid.</p> <p>14 Q Ms. Valdivieso never provided services to</p> <p>15 somebody that did not have Medicaid. Is that what</p> <p>16 you're saying?</p> <p>17 A Yeah, she always, I think the only cases she</p> <p>18 had, they were both Medicaid. Actually we considered</p> <p>19 Mr. and Mrs. Izique that's two clients with Medicaid.</p> <p>20 And another client that she had was also Medicaid.</p> <p>21 Q However, if clients have a different type of</p> <p>22 insurance that's not Medicare or Medicaid, then it's</p> <p>23 considered private hours?</p> <p>24 A Yes, if it's not yeah, Medicaid.</p> <p>25 Q And are client -- I'm sorry, are caregivers</p>

<p style="text-align: right;">Page 42</p> <p>1 who have private hours paid on a different rate?</p> <p>2 A No, well it depends on the insurance. Yes, it</p> <p>3 does because Medicaid pays a certain amount and also a</p> <p>4 private, but they're basically pay rate -- basically the</p> <p>5 same for the caregivers.</p> <p>6 Q Who establishes the pay rate for the</p> <p>7 caregivers, is it Medicaid -- I'm sorry. Is it the</p> <p>8 private insurer or is it All VIP?</p> <p>9 A If it's private you're saying or if it's</p> <p>10 Medicaid?</p> <p>11 Q Yeah. Well, let me ask a different question.</p> <p>12 How much was Cruz Valdivieso being paid per hour?</p> <p>13 A 13 at that time.</p> <p>14 Q And so, at the time when she first signed up</p> <p>15 with All VIP, she was being paid \$13 an hour?</p> <p>16 A Yes, it went up to \$13 an hour that's correct.</p> <p>17 Q Okay. Do All Home -- and Ms. Cruz Valdivieso</p> <p>18 was working as a Home Health Aide for All VIP?</p> <p>19 A I'm sorry, I didn't get.</p> <p>20 Q Yeah.</p> <p>21 A Can you repeat the question?</p> <p>22 Q Ms. Cruz was working as a Home Health Aide for</p> <p>23 All VIP?</p> <p>24 A Yes.</p> <p>25 Q Okay. Do all Home Health Aides working for</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Just for the record, the Izique is going to be</p> <p>2 I-Z-I-Q-U-E. So, now let's get into a different -- when</p> <p>3 was her pay rate established on the same day that she</p> <p>4 came in to fill out the application?</p> <p>5 A No, it's not -- it's not the -- on the same</p> <p>6 day of the application. It's when she is hired for a</p> <p>7 case.</p> <p>8 Q Okay.</p> <p>9 A Because she could fill out the application and</p> <p>10 the application can just be there and she could be with</p> <p>11 our employment for, you know.</p> <p>12 Q Got it. So, now let's talk about the next</p> <p>13 step of the process a caregiver signs up -- I'm sorry,</p> <p>14 caregiver fills out the application. All VIP does the</p> <p>15 background check, checks all their certifications. Now,</p> <p>16 how does the caregiver actually start to provide service</p> <p>17 for All VIP's clients?</p> <p>18 A After everything, you know, is good to go,</p> <p>19 then I will call her and I say, "Listen I have a case.</p> <p>20 It's not too far from you." I explained the case</p> <p>21 completely, you know, like the Care plan of the client,</p> <p>22 I explained to her -- I explained to her the hours and</p> <p>23 if she agrees, then I send her a text with the client's</p> <p>24 name, address, telephone number, schedule, pay rate, and</p> <p>25 she would just have to, you know, text back confirm.</p>
<p style="text-align: right;">Page 43</p> <p>1 All VIP make \$13 an hour?</p> <p>2 A Some don't make \$13 an hour. Right now</p> <p>3 they're all making 15, you know, State mandatory, at</p> <p>4 that time it wasn't State mandatory. A lot of them were</p> <p>5 making less, so that's why they were coming here because</p> <p>6 we were paying more.</p> <p>7 Q Okay. When did the State mandate that Home</p> <p>8 Health Aides make \$15 an hour?</p> <p>9 A October of last year.</p> <p>10 Q However, before October 2022, were Home Health</p> <p>11 Aides able to negotiate their own rate with All</p> <p>12 VIP?</p> <p>13 A Yeah, they always did that, yes.</p> <p>14 Q Okay. And the \$13 an hour that Cruz</p> <p>15 Valdivieso was making, was that more or less than what</p> <p>16 the average of was for Home Health Aides?</p> <p>17 A More.</p> <p>18 Q Why was she able to negotiate more?</p> <p>19 A Because she was doing two, husband and wife,</p> <p>20 you know, at the same, you know, at the same home. And</p> <p>21 she said it was becoming -- it was difficult. So, yeah,</p> <p>22 that's what she was paid.</p> <p>23 Q And when you say husband and wife, you're</p> <p>24 talking about the Izique case?</p> <p>25 A Yes, the Izique case.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q And does Ms. Cruz had the ability to reject</p> <p>2 that offer?</p> <p>3 A Yes, if she didn't want the case, she, you</p> <p>4 know, she said, "I don't want the case. Find me another</p> <p>5 one." Yes, of course we won't leave anyone if they</p> <p>6 don't feel comfortable in a -- in that client's home.</p> <p>7 And that's one of the things I tell them</p> <p>8 before they are hired, you know, if you don't feel</p> <p>9 comfortable in a client's home, you have to let me know</p> <p>10 or we can, you know.</p> <p>11 Q How does All VIP find its clients to match</p> <p>12 them with the caregivers?</p> <p>13 A Well, it usually we go by how the distance,</p> <p>14 the distance experience the language Izique's wanted a</p> <p>15 Spanish caregiver. Some clients prefer, you know can</p> <p>16 they be central American, you know, they like, they want</p> <p>17 to be specific, you know.</p> <p>18 Q Um-hum.</p> <p>19 A And we just match them like that.</p> <p>20 Q And how does All VIP find the patients in the</p> <p>21 first place?</p> <p>22 A Okay. Since we work with Medicaid, we work</p> <p>23 with a lot of case managers. Case managers will call</p> <p>24 us, let us know, you know, we have a client, they give</p> <p>25 us, you know, the address, all the information that we</p>

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1 provide, you know, to the caregivers, the care plan and  
2 all that.  
3 And then they send us the authorization. And  
4 from there, you know, it's put into the system, schedule  
5 is created and once the schedule is created, you know,  
6 and we already chose the caregiver, but the caregiver,  
7 it's enter into the client's schedule.  
8 So, that's how, you know, we can know the  
9 hours and payroll could be run.  
10 **Q So, the care plan consists of the schedule for**  
11 **the patient. Is that correct?**  
12 A No, the care plan explains to them what needs  
13 to be done in the client's home. Like if they have  
14 personal care, they have companion, they have  
15 homemaking, so everything is explained to them.  
16 **Q And do you ever communicate with the Medicaid**  
17 **case managers personally?**  
18 A Yes, I do. I have to.  
19 **Q Okay. That's part of your job?**  
20 A Yes.  
21 **Q All right. So, you could be sitting down in**  
22 **the office and then a Medicaid case manager will call**  
23 **and say, "Hey, I have this patient that needs these**  
24 **services."**  
25 A Yes.

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1 **Q "And they need this schedule and can you**  
2 **please find us a caregiver to work with them?"**  
3 A That's correct.  
4 **Q Okay. So, the schedule is created by you and**  
5 **the case manager or the case manager calls already with**  
6 **a schedule in place?**  
7 A Sometimes the case manager has like, she'll  
8 give me the schedule, this is the schedule that the, you  
9 know, the client wants and the client needs.  
10 And then sometimes when I call the client, it  
11 is totally different schedule than what the case manager  
12 gave me. So, that's why I always call the client, to,  
13 you know, confirm --  
14 **Q Okay.**  
15 A -- all the information.  
16 **Q And is there a contractual agreement between**  
17 **All VIP and the client or All VIP and Medicaid?**  
18 A No, it will be All VIP and with I'm talking --  
19 I'm sorry. You meant the client with -- if they have a  
20 contract with us?  
21 **Q Right.**  
22 A Yes.  
23 **Q The patients, right?**  
24 A Yes.  
25 **Q Okay.**

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1 A They -- um-hum.  
2 **Q Is there a separate application that patients**  
3 **fill out when they have -- when they are working with**  
4 **All VIP?**  
5 A Okay. It's called the start of care. Okay.  
6 When I call them, I ask them, you know, let the plan of  
7 care, what is it that you're, you know, the client  
8 needs.  
9 Do they need bathing every day? Do they need  
10 to be fed? Are they bedridden or, you know, wheelchair,  
11 all those questions. That's the health plan.  
12 And then we go with the other plan, which is  
13 the hurricane preparedness in case there's a hurricane.  
14 Do you need a caregiver during or do you need to be  
15 registering a special needs shelter?  
16 The other plan is, which is a client -- that's  
17 the contract client's agreement, which is if the  
18 caregiver drives them, you know, any place like for a  
19 Doctor's appointment or anything happens to them, they  
20 cannot sue, you know, the aide or the company.  
21 Because they requested, you know, for the aide  
22 to take them, you know, to do errands or for doctor's  
23 appointments. That's part of client service agreement.  
24 **Q Sorry, the -- besides the phone call that you**  
25 **make to the client for the start of care, does the**

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1 **patient also sign a document before Care is administered**  
2 **to them through VIP?**  
3 A Document and like the application that -- I  
4 don't understand what other --  
5 **Q Yeah, just --**  
6 A What other application. No problem --  
7 **Q No. Talking about specifically for the**  
8 **patient, let's say -- let's use an example for, one of**  
9 **the IZIQUE, let's say Cesar Izique. Does Cesar Izique**  
10 **have any written contract with All VIP?**  
11 A Just the one I told you, the client service,  
12 you know, the -- it's called the start of care where  
13 they give me the doctor's information in case of, you  
14 know, emergency numbers.  
15 Like I had the sister, both sisters name and  
16 phone number, all that, they have to give me is called  
17 start of care that we have to go through and they -- and  
18 I go through the questions over the phone, and then if  
19 they --  
20 **Q Okay. Sorry. And you fill out the start of**  
21 **care information?**  
22 A Yes, I fill out the start of care information  
23 and I explained to them everything and if they agree,  
24 then everything they, you know, they signed, I mailed it  
25 to them.

<p style="text-align: right;">Page 50</p> <p>1 Like this one was during -- say, during the</p> <p>2 hurr -- the pandemic, I had it to mail it out to them.</p> <p>3 <b>Q Um-hum.</b></p> <p>4 A If not, we -- I usually go to the client's</p> <p>5 home and you know, meet them there and go through all</p> <p>6 that with them.</p> <p>7 <b>Q And then you have the client sign the start of</b></p> <p>8 <b>care paperwork?</b></p> <p>9 A The person that has -- the person that's in</p> <p>10 charge because the clients couldn't sign.</p> <p>11 <b>Q Oh, you mean --</b></p> <p>12 A It's a person in charge.</p> <p>13 <b>Q Okay.</b></p> <p>14 A It has a POA.</p> <p>15 <b>Q Got it. A Power of Attorney. Right. Okay.</b></p> <p>16 <b>And so, does the caregiver also have a contract with the</b></p> <p>17 <b>client. So, let's say in this particular case, did</b></p> <p>18 <b>Ms. Cruz have a separate contract with the Izique?</b></p> <p>19 A No, not that I know of.</p> <p>20 <b>Q Okay. So, as far as contracts go, Ms. Cruz</b></p> <p>21 <b>has a contract with VIP, correct. That's the 26-page</b></p> <p>22 <b>application we just looked at?</b></p> <p>23 A That's correct.</p> <p>24 <b>Q And then separately, the patient or the client</b></p> <p>25 <b>has a contract with All VIP, correct?</b></p>	<p style="text-align: right;">Page 52</p> <p>1 able to do it, we tell them you have to clock in and</p> <p>2 clock out on your phone.</p> <p>3 There's going to be times that maybe you're</p> <p>4 not going to have, you know, internet service or you</p> <p>5 know, can be down. We always require a time sheet no</p> <p>6 matter what.</p> <p>7 Even if you clock in or if you clock out, we</p> <p>8 have, and it has to be signed by the client or the</p> <p>9 person that's in charge of the cl -- you know, like they</p> <p>10 seek us with the daughter. There's always a time sheet</p> <p>11 that needs to turn in. He turn in on Mondays.</p> <p>12 <b>Q And where does that time sheet go?</b></p> <p>13 A It goes into the client's document a file.</p> <p>14 <b>Q Does any time sheet have to be ultimately</b></p> <p>15 <b>submitted to Medicare or Medicaid?</b></p> <p>16 A If they ask aspirate, we have to give it to</p> <p>17 them. That's why we keep it on file. That's -- it's</p> <p>18 very important to have those time sheets and, you know,</p> <p>19 have them signed.</p> <p>20 <b>Q How does Medicare or Medicaid ultimately make</b></p> <p>21 <b>payment to All VIP, what does Medicaid need to --</b></p> <p>22 <b>does -- is there any document that Medicaid needs to be</b></p> <p>23 <b>able to make payment for service?</b></p> <p>24 A That -- I'm not in charge of that part of</p> <p>25 payroll, but -- so I cannot be like, give you like a</p>
<p style="text-align: right;">Page 51</p> <p>1 A Yes.</p> <p>2 <b>Q All right. And then All VIP just puts those</b></p> <p>3 <b>two parties together, meaning the caregiver and the</b></p> <p>4 <b>patient?</b></p> <p>5 A That's correct.</p> <p>6 <b>Q Okay. All right. Now, after -- who determines</b></p> <p>7 <b>the hours that a patient can be provided service?</b></p> <p>8 A In this case is -- in this case, since it's</p> <p>9 Medicaid, Medicaid gives the authorization. If it's</p> <p>10 private, well, it'll be the, you know, the private</p> <p>11 client.</p> <p>12 <b>Q Are there times when the client wants more</b></p> <p>13 <b>service in terms of hours, but Medicaid can, says that</b></p> <p>14 <b>they can't have more?</b></p> <p>15 A Yes, that happens a lot.</p> <p>16 <b>Q Now, when there is a Medicaid patient, such as</b></p> <p>17 <b>the Izique, how does billing work, does the caregiver</b></p> <p>18 <b>have to fill out a certain document that needs to be</b></p> <p>19 <b>submitted to Medicare?</b></p> <p>20 A Okay. This is how it works. When they come</p> <p>21 in, we teach them how to clock in and clock out on an</p> <p>22 app that they have to download on their phone. A lot of</p> <p>23 them, you know, are not very computer, you know, savvy.</p> <p>24 So, we have to go step-by-step to teach them,</p> <p>25 you know, how it works. Once that we know that they're</p>	<p style="text-align: right;">Page 53</p> <p>1 correct answer if, you know, if they bill weekly or</p> <p>2 monthly or every two weeks, I can't give you that</p> <p>3 answer.</p> <p>4 <b>Q Okay. Are you responsible for overseeing the</b></p> <p>5 <b>hours that are submitted by the caregivers?</b></p> <p>6 A Yes, everything that has to do with the hours</p> <p>7 of the client. Yes.</p> <p>8 <b>Q So, in this particular case, going back to</b></p> <p>9 <b>Cruz Valdivieso when was she paired with the Izique?</b></p> <p>10 A You need the exact date?</p> <p>11 <b>Q No, I just wanted to get an idea, like really</b></p> <p>12 <b>I was more so trying to find out if the application that</b></p> <p>13 <b>we looked at is correct. It seems that she started with</b></p> <p>14 <b>All VIP on May 3rd, 2021. That's when she filled out</b></p> <p>15 <b>her application.</b></p> <p>16 A Yeah, but she didn't start -- she didn't start</p> <p>17 that month, but that year, yes.</p> <p>18 <b>Q Okay. And that's all I'm really trying to</b></p> <p>19 <b>figure out. Not the exact date that she was --</b></p> <p>20 A Okay.</p> <p>21 <b>Q -- paired with the Izique. I just wanted to</b></p> <p>22 <b>know, you know, she signed her application with All VIP</b></p> <p>23 <b>and then about how long after that did she start working</b></p> <p>24 <b>with a first client --</b></p> <p>25 A It was the same.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q -- she was paired with?</p> <p>2 A Yeah, it was the same year. It was the same</p> <p>3 year. Couple months, I say maybe.</p> <p>4 Q Were the Izique's the first clients that All</p> <p>5 VIP paired Ms. Cruz with?</p> <p>6 A She had more than one client that was not her</p> <p>7 first client.</p> <p>8 Q Do you remember her --</p> <p>9 A First client.</p> <p>10 Q Oh, go ahead.</p> <p>11 A Yes, I remember her first client. It was in</p> <p>12 Pembroke Pines last name Alicia Soto. And I'm not</p> <p>13 mistaken, Soto.</p> <p>14 Q Was Ms. Soto a Medicare patient?</p> <p>15 A Yeah, she was also on Medicaid, yes.</p> <p>16 Q Medicaid. Okay. Now, did Ms. Cruz have any</p> <p>17 issues with her placement with Alicia Soto?</p> <p>18 A Well, according to the client's daughter that</p> <p>19 they, you know, they really liked during the beginning,</p> <p>20 but then because of the hours she was very cushy.</p> <p>21 You know, I need more hours, I need hours, I</p> <p>22 need hours, you need a call and ask for more hours. And</p> <p>23 you know, that's, you know, the only thing that I got,</p> <p>24 you know, from clients, not only the Soto's, but also</p> <p>25 from the Izique's.</p>	<p style="text-align: right;">Page 56</p> <p>1 caregivers at that, you know, with one client. She did</p> <p>2 all the hours.</p> <p>3 Q Okay. Why couldn't you have two caregivers</p> <p>4 with one client?</p> <p>5 A Why should I? I mean --</p> <p>6 Q No, I don't mean at the same time, I don't</p> <p>7 mean like from --</p> <p>8 A Oh.</p> <p>9 Q I don't mean from like, oh, from 9:00 to 4:00</p> <p>10 you have, you know, Cruz and another caregiver. I mean,</p> <p>11 like, if it was 09:00 to 04:00, did somebody else come</p> <p>12 in from Florida --</p> <p>13 A No, no, no.</p> <p>14 Q -- Oh yeah. Got it. And the only thing I was</p> <p>15 trying to clarify was, okay. I know Ms. Cruz is a home</p> <p>16 health aide, but did somebody come later that might have</p> <p>17 been a CNA or --</p> <p>18 A Oh, you mean like if she had -- oh yeah, I --</p> <p>19 okay. I understand you now. Like if she had long hours</p> <p>20 and then somebody, another caregiver that did another</p> <p>21 shift.</p> <p>22 Q Right?</p> <p>23 A No, no this case wasn't like that.</p> <p>24 Q Okay.</p> <p>25 A The Izique case was, yeah.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q Okay. So, in Alicia Soto's case, Alicia Soto</p> <p>2 was the patient and her daughter was her Power of</p> <p>3 Attorney.</p> <p>4 A Yes, that's correct. The daughter was the</p> <p>5 power of attorney.</p> <p>6 Q And you received a complaint from the daughter</p> <p>7 that Ms. Cruz was being too pushy and asking them to</p> <p>8 provide more hours for her?</p> <p>9 A Yes, that's correct.</p> <p>10 Q Okay. Around what time period did you start</p> <p>11 receiving complaints about -- from Ms. Soto's daughter,</p> <p>12 about Ms. Cruz?</p> <p>13 A I don't -- I think she was there just for a</p> <p>14 couple months, but towards the end, right before, you</p> <p>15 know, Daisy or Cruz decided she didn't -- she gave me</p> <p>16 time to find somebody else for that client.</p> <p>17 Q Okay. Now, in Ms. Soto's case was Ms. Cruz</p> <p>18 the only home health aide providing care for her from</p> <p>19 All VIP?</p> <p>20 A For Soto, yes. For Soto, yes not for the</p> <p>21 Izique's.</p> <p>22 Q And was -- let me be more specific. Was</p> <p>23 Ms. Cruz the only caregiver providing services on behalf</p> <p>24 of All VIP to Ms. Soto?</p> <p>25 A At that time, yes. We couldn't have two</p>	<p style="text-align: right;">Page 57</p> <p>1 Q Got it. Okay. After Ms. -- okay. Did</p> <p>2 Ms. Cruz ever complain about not being paid her hours</p> <p>3 properly when she gave care to Ms. Soto?</p> <p>4 A No, I'm sorry. Let me -- I'm sorry. Let me,</p> <p>5 correct that. One day she, I guess the client called</p> <p>6 her to ask if she can do respite hours. Respite hours</p> <p>7 are extra hours that are given to the client.</p> <p>8 If a family member needs to, you know, take a</p> <p>9 vacation or needs to do something personal. Those are</p> <p>10 extra hours that they're given to the -- to release the,</p> <p>11 you know, the family member.</p> <p>12 Q Um-hum.</p> <p>13 A And she called me, she says, they called me</p> <p>14 and they asked me if I can do these hours. And I told</p> <p>15 them I'm able to do them. And I said, okay. But do not</p> <p>16 start until I get the authorization.</p> <p>17 And this was something that I constantly had</p> <p>18 to tell her because she didn't understand that she just</p> <p>19 went by what the clients, you know, told her.</p> <p>20 So, I said no, the case manager might, you</p> <p>21 know, tell her that she has certain hours approved, but</p> <p>22 it doesn't mean that they are, you know, that's what I</p> <p>23 have on my side. I have to go by the authorization.</p> <p>24 I told her, "If you work more than those</p> <p>25 hours, you're not going to get paid." I told her, "You</p>

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1 work the hours that I tell you." She goes, "Okay fine."  
 2 The next thing, "The daughter told me to stay, so you  
 3 owe me more hours because the daughter told me to stay."  
 4 And then I said, "Here we go again." I told  
 5 her, "You're not allowed to work over the hours. You're  
 6 not allowed to work overtime, I told you, unless we have  
 7 the authorization."  
 8 And so, I had to call the case manager, call  
 9 the family member. Okay. And explain to them what she  
 10 had done, that she worked like, I think it was like  
 11 maybe four extra hours.  
 12 And it took, it was -- it's a process. And I  
 13 told her, now you're going to have to wait because now I  
 14 have to ask for another authorization to see if they  
 15 approved it.  
 16 Because according to the case -- to the case  
 17 manager, these were the hours that she had the case  
 18 manager told the, you know, the family member something  
 19 else. It's not my fault.  
 20 **Q Right.**  
 21 A I go by what the authorization. Well, I --  
 22 she didn't -- to her, it's like speaking to the wall.  
 23 **Q Okay. So --**  
 24 A So, I said, now you, I told her she had to --  
 25 **Q Got it. And so, just to make sense of what**

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1 **you're saying, Medicare or Medicaid is going to**  
 2 **authorize a certain number of hours that care can be**  
 3 **given to a ca -- a client, correct?**  
 4 A That's correct --  
 5 **Q Okay.**  
 6 A -- Your Counsel.  
 7 **Q And then sometimes the Power of Attorney in**  
 8 **this case, Alicia Soto's daughter said, "I need respite**  
 9 **hours," correct?**  
 10 A Yes. To the case manager.  
 11 **Q To the case manager, right. And I think**  
 12 **respite is going to be spelled for the record**  
 13 **R-E-S-P-I-T-E. Is that right?**  
 14 A That's correct, Your Counsel.  
 15 **Q All right. And so, the do -- what was -- do**  
 16 **you remember Alicia Soto's daughter's name?**  
 17 A Well, there was so many of them in here. It's  
 18 the party --  
 19 **Q No, you don't -- you don't have to look at**  
 20 **anything if you don't remember. That's fine -- that's**  
 21 **fine.**  
 22 A No, I don't. I'm sorry.  
 23 **Q You don't remember. Okay. That's fine. But**  
 24 **either way and what Ms. Soto's daughters was saying is**  
 25 **like, "I need my own time for myself, so I need -- I**

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1 **would like Cruz to work like four extra hours," for**  
 2 **example, right?**  
 3 A Yeah, she didn't say to work the four extra  
 4 hours. She would tell, you know, she would tell them,  
 5 "Oh, I already got the case manager call me and she said  
 6 that I had such and such hours, you know."  
 7 **Q Okay. You're saying Cruz would call you and**  
 8 **say that?**  
 9 A No, the family members of the client.  
 10 **Q Oh, the daughter would say that. Okay. The**  
 11 **daughter.**  
 12 A Yeah. And then sh --  
 13 **Q Yeah.**  
 14 A I'm sorry.  
 15 **Q But -- no problem. Sorry because I'm cutting**  
 16 **you off now. But for All VIP's purposes, you only have**  
 17 **one authorization for a certain number of hours. You**  
 18 **don't have a second authorization for these respite**  
 19 **hours that are being requested?**  
 20 A Yes, they -- the Medicaid will give us  
 21 authorization for respite hours, but if they say it's  
 22 10, it's 10. They -- they're very specific. They won't  
 23 say, 10 hours in two days. No. If it's 10 hours in one  
 24 day, then it's 10 hours in one day.  
 25 **Q Okay.**

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1 A You know, you can't split them.  
 2 **Q But either way, you have to get the**  
 3 **authorization first before the Home Health Aide works?**  
 4 A That's correct. Your Counsel.  
 5 **Q And you're saying in this case -- in the**  
 6 **Soto's case, Ms. Cruz didn't wait for you to get the**  
 7 **authorization for the respite hour. She just worked**  
 8 **them and then came to you after and said, "Pay me for**  
 9 **them now?"**  
 10 A Okay. That's correct. Your Counsel.  
 11 **Q Okay. And then what you have to do is on your**  
 12 **end now, you have to go retroactively get the**  
 13 **authorization?**  
 14 A If they authorized.  
 15 **Q If they authorized it. Okay. Got it. And**  
 16 **so, in this case, were you able to retroactively get the**  
 17 **authorization from Ms. Soto's respite hours?**  
 18 A It took a couple of months for them to  
 19 approve.  
 20 **Q When the authorization was finally approved,**  
 21 **was Ms. Cruz paid those extra hours?**  
 22 A Yes, I called her myself and I was like,  
 23 really happy, you know, I said, "Hey, listen, you know,  
 24 it was approved and those hours will be, you know, paid  
 25 in your next paycheck", once it was approved. But at

<p style="text-align: right;">Page 62</p> <p>1 that time, this was going on with the Izique case. There</p> <p>2 was an issue with their schedule.</p> <p>3 <b>Q</b> Okay. Got it. So, now let's talk about the --</p> <p>4 well, let me ask you this. How many clients overall did</p> <p>5 All VIP pair with Ms. Cruz?</p> <p>6 A After she was done with the Soto she had</p> <p>7 Angela Melendez. And then she didn't really, like that</p> <p>8 case, said she didn't really deal with that client. And</p> <p>9 then that's when she started with the Izique's.</p> <p>10 <b>Q</b> After the Izique's, did Ms. Cruz work with any</p> <p>11 other patients for All VIP?</p> <p>12 A Not that I can recall. Just Jolanda Izique,</p> <p>13 Cesar Izique, the Soto's and Angela Melendez.</p> <p>14 <b>Q</b> Got it. Okay. Now, I'm just going to go</p> <p>15 through the same thing with each one. So, let's start</p> <p>16 with Angela Melendez, were there any -- did Ms. Cruz</p> <p>17 complain about any payment issues with Angela Melendez?</p> <p>18 A With Angela Melendez, she had an issue because</p> <p>19 she was putting hours that she didn't work.</p> <p>20 <b>Q</b> Okay. On her time sheet?</p> <p>21 A Yes.</p> <p>22 <b>Q</b> How do you know she did not work the hours?</p> <p>23 A Because I called the client because it wasn't</p> <p>24 signed. And this client usually calls me. So, I called</p> <p>25 the client to confirm if those hours were worked and</p>	<p style="text-align: right;">Page 64</p> <p>1 A And she's still our client.</p> <p>2 <b>Q</b> Now, how -- so, you're saying that All VIP had</p> <p>3 a care plan for Ms. Melendez, correct?</p> <p>4 A That's correct.</p> <p>5 <b>Q</b> That care plan authorized certain hours for</p> <p>6 Ms. Melendez to receive service?</p> <p>7 A That's correct.</p> <p>8 <b>Q</b> Ms. Cruz was placed on a schedule to provide</p> <p>9 those hours to Ms. Melendez?</p> <p>10 A That's correct.</p> <p>11 <b>Q</b> And on one particular day or certain days, she</p> <p>12 just did not appear and work the days on the schedule?</p> <p>13 A That's correct.</p> <p>14 <b>Q</b> But she still put on her time sheet that she</p> <p>15 did work those days?</p> <p>16 A That's correct. She put them in the sheet,</p> <p>17 worked.</p> <p>18 <b>Q</b> And the way that you found out was you called</p> <p>19 Ms. Melendez to say, "Hey, Medicare is reducing your</p> <p>20 hours of authorization." And at that time, Ms. Melendez</p> <p>21 has informed you, "Oh, well Ms. Cruz has not been</p> <p>22 working these hours."</p> <p>23 A No, that day that I went to confirm the time</p> <p>24 sheet for that Friday.</p> <p>25 <b>Q</b> Okay.</p>
<p style="text-align: right;">Page 63</p> <p>1 because I had called it to tell her that all her</p> <p>2 authorization was -- a couple of hours decreased.</p> <p>3 So, I also wanted to tell her that. And then</p> <p>4 she told me, well, she didn't work that day. And I</p> <p>5 said, "What do you mean?" I said, she has it down here</p> <p>6 that she worked on Friday, six hours.</p> <p>7 And lucky she was there -- Cruz was there at</p> <p>8 the home when I called. And then the client said, "Why</p> <p>9 did you put that you worked on Friday? You know, you</p> <p>10 didn't -- you didn't work." And then she was quiet. I</p> <p>11 heard her, she was like, the silent. And then she said,</p> <p>12 "Oh, I didn't know, I put it down."</p> <p>13 <b>Q</b> So, you could hear a conversation going on</p> <p>14 through the phone on the Melendez --</p> <p>15 A Um-hum.</p> <p>16 <b>Q</b> Between Melendez and Cruz?</p> <p>17 A Yes.</p> <p>18 <b>Q</b> Okay. And Ms. Melendez, did she have a Power</p> <p>19 of Attorney or did you speak directly with her?</p> <p>20 A No, directly with her. She's okay to -- she</p> <p>21 don't have no Power of Attorney.</p> <p>22 <b>Q</b> Okay. And was she also a Medicare or Medicaid</p> <p>23 patient?</p> <p>24 A She was Medicaid, yes.</p> <p>25 <b>Q</b> Medicaid.</p>	<p style="text-align: right;">Page 65</p> <p>1 A Yeah, and Ms. Cruz knew as well, but I called</p> <p>2 the client, so the client don't tell her, oh, you have</p> <p>3 to work it, you know.</p> <p>4 <b>Q</b> I see.</p> <p>5 A When I called --</p> <p>6 <b>Q</b> Yeah, sorry, go ahead.</p> <p>7 A But when I called the client, the client told</p> <p>8 me, "Oh, I already knew. They already called me and I</p> <p>9 already told Daisy." And I said, "You told Daisy as</p> <p>10 well?" And she still went ahead and put down that she</p> <p>11 worked and that's when she confronted her. The client</p> <p>12 confronted her.</p> <p>13 <b>Q</b> I see. So, why did you have a suspicion that</p> <p>14 Ms. Cruz had falsified a time sheet?</p> <p>15 A I had, you know why because I was already</p> <p>16 watching her because I don't know if I should go into</p> <p>17 this part or just --</p> <p>18 <b>Q</b> No, you should.</p> <p>19 A For you to --</p> <p>20 <b>Q</b> No, you should. Yeah, listen, because I'm</p> <p>21 going to go into it anyway. So, I mean, because I want</p> <p>22 to know why you had a -- I just want to know why you</p> <p>23 thought the time sheet hours were not correct. So,</p> <p>24 that's what we're getting?</p> <p>25 A Yeah.</p>

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1 **Q Yeah.**  
 2 A Okay. She was not clocking in and out and she  
 3 was -- she's supposed to clock in and out, so you know,  
 4 I always had to hear this excuse, oh, it doesn't work --  
 5 it doesn't work.  
 6 I said, "But every day it doesn't work." I  
 7 said, "There's on the Izique's I have all the caregivers  
 8 there and they're clocking in and clocking out."  
 9 So, at that time, Daisy she was very  
 10 frustrated because she told me she had a debt of a  
 11 \$40,000 and she needed to work. I said, "I understand,  
 12 but your hours are overlapping. You -- how can you work  
 13 more than 24?  
 14 There's 24 hours in one day and you're putting  
 15 in more hours." I said, "You need to clock in and clock  
 16 out because this is going to cost issue with payroll."  
 17 Everything was explained to her and, you know, it is  
 18 just like she didn't understand.  
 19 She was just so -- she had so much stress  
 20 because of that debt that she had all that, that's all  
 21 she kept talking about. And you know, I was trying --  
 22 **Q No, sorry, I'll let you continue. Yeah.**  
 23 A So, when the caregiver that was there, okay.  
 24 There was a new caregiver that went in and told me,  
 25 well, she's -- she says, "I'm going to tell you the

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1 truth, she is leaving early when I -- you know, by the  
 2 time she's supposed to stay here, those hours when I  
 3 come in, she leaves before time."  
 4 So, when I started, you know, putting two and  
 5 two together, she was putting a lot of hours on her  
 6 time. She was not clocking in. Melendez was telling me  
 7 she was, you know, that, you know, she put hours that  
 8 she didn't work.  
 9 So, that's when we -- I started, you know,  
 10 doing a little bit of investigation on my side because  
 11 she kept complaining. So, when I told her, I spoke to  
 12 the daughter and I said, the -- because the daughter was  
 13 also concerned, you know, "They're not paying me the  
 14 hours that I'm working."  
 15 And you know, and Izique's daughters were  
 16 like, "Oh my God, you know, she's going to leave and I  
 17 can't be without a caregiver and I need her because she  
 18 already." You know, she had -- I don't know like the  
 19 word to use, but she bribed them, you know, like, oh,  
 20 you know. "I'm going to leave if you don't take care of  
 21 this."  
 22 She was putting all the burden to the client  
 23 and I told her, "That's not the client's, you know,  
 24 business you need to call us. They don't do payroll for  
 25 you." And I said, "You know, you can't give the client

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1 the stress." I told her.  
 2 And then, it came out to be, when I spoke to  
 3 one of the other daughters, she was putting all these  
 4 extra hours because some hours were being paid  
 5 privately.  
 6 And then it slipped on one of the daughters  
 7 that when, you know, spoke to me, she goes, "Oh, she was  
 8 not supposed to put those hours there. Oh, I'm sorry.  
 9 Well, I need to speak to her. I already told her, you  
 10 know, the hours that are private and the hours that are  
 11 with you."  
 12 And that's when everything had exploded, you  
 13 know, with the --  
 14 **Q Okay. Now, when you're talking about the**  
 15 **daughters, you're talking about the Izique's daughters?**  
 16 A Yes, I had Anna and Susana.  
 17 **Q Okay. And Anna's going to be Anna Marie**  
 18 **Roland.**  
 19 A Yeah, I have her as Izique.  
 20 **Q Izique. Okay. So, let me -- let's backtrack**  
 21 **a little bit because when you are talking, I think**  
 22 **you're kind of, you know what happened, but I don't,**  
 23 **so --**  
 24 A Okay.  
 25 **Q I think you are sort of like, combining**

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1 **everything together and I need to break it out a little**  
 2 **bit.**  
 3 A Okay.  
 4 **Q Let's talk about the debt. When did Ms. Cruz**  
 5 **first start telling you about this \$40,000 debt she had?**  
 6 A She's like a couple of months later that  
 7 she's -- when she was still with the Soto's.  
 8 **Q Okay. But not like when she immediately came**  
 9 **in to apply for a job with All VIP, she just --**  
 10 A No, she didn't.  
 11 **Q Okay.**  
 12 A No, she didn't tell me that like that on the  
 13 first.  
 14 **Q And when she started mentioning the debt to**  
 15 **you, was this in-person in the office or was she telling**  
 16 **you over the phone, how did she communicate it?**  
 17 A She told me when she started. Remember I told  
 18 you in the beginning that she used to come constantly,  
 19 you know, to see if we have any other cases or to bring  
 20 her time sheet. That's when she told me over the phone  
 21 and on in-person, both.  
 22 **Q Did she say what -- did she say what the debt**  
 23 **was for?**  
 24 A Yes.  
 25 **Q What was it for?**

<p style="text-align: right;">Page 70</p> <p>1 A Dental work.</p> <p>2 Q All right. And so, how often would she</p> <p>3 complain about that \$40,000 debt?</p> <p>4 A Every time that, you know, she have</p> <p>5 overlapping in her hours, you know, and I'm very, you</p> <p>6 know, when it comes down to the aides getting paid every</p> <p>7 Friday, I'm very responsible with that.</p> <p>8 I want them to get paid and to get paid for</p> <p>9 what they work for. Okay. She was the only issue</p> <p>10 because she was putting hours that she didn't work, so</p> <p>11 it was overlapping.</p> <p>12 I couldn't put any more hours in there. So,</p> <p>13 this is when you know, oh, she's, "Ah, I need to pay the</p> <p>14 debt." You know, "You guys are not paying me", you</p> <p>15 know, "All my hours." You know, that's when she started</p> <p>16 getting a little bit frustrated.</p> <p>17 Q When you confronted Ms. Cruz about overlapping</p> <p>18 hours, was her response that she did not put down</p> <p>19 overlapping hours or she just said, "I have to pay my</p> <p>20 debt?"</p> <p>21 A No, she said, "Oh, I worked it", like really</p> <p>22 upset. "I worked those hours and you need to pay me and</p> <p>23 if you don't pay me, then I'm going to have the client's</p> <p>24 family to pay me." And she was doing that to the Mel --</p> <p>25 to Ms. Melendez too. She was threatening Melendez.</p>	<p style="text-align: right;">Page 72</p> <p>1 Q By three clients, you mean, Cesar Izique,</p> <p>2 Jolanda Izique and Ms. Melendez?</p> <p>3 A Um-hum.</p> <p>4 Q Just for the record, you have to say yes, but</p> <p>5 that's, yeah. So, I'm going to -- I'm just going to</p> <p>6 repeat that question.</p> <p>7 When you say Ms. Cruz had three clients, you</p> <p>8 mean Cesar Izique, Jolanda Izique, and Ms. Melendez?</p> <p>9 A That's correct.</p> <p>10 Q Now, Cesar Izique and Jolanda Izique were in</p> <p>11 the same household?</p> <p>12 A Cesar and Jolanda were in the same household.</p> <p>13 Q When Ms. -- do they have -- does Medicare</p> <p>14 consider them as separate patients for authorization</p> <p>15 purposes?</p> <p>16 A That's correct.</p> <p>17 Q So, when Ms. Cruz is providing care to the</p> <p>18 Izique's, how is she supposed to bill that time because</p> <p>19 isn't she there with them together at the same time?</p> <p>20 A Okay. So, this is how it works. She -- let's</p> <p>21 say that Jolanda has, I think Jolanda had less hours.</p> <p>22 So, let's say Jolanda had four hours, you</p> <p>23 know, she worked there 9, 10, 11 to 12. And then after</p> <p>24 that she will work with Mr. Izique. So, that's -- that</p> <p>25 authorization is for that client.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q Okay. Ms. Melendez was the second person that</p> <p>2 All VIP paired --</p> <p>3 A Yes.</p> <p>4 Q -- Ms. Cruz with?</p> <p>5 A Yes.</p> <p>6 Q Okay. And she -- Ms. Cruz worked with Ms.</p> <p>7 Melendez for about how long, in months?</p> <p>8 A For a couple months, I'd say. She was on --</p> <p>9 I'd say maybe three months steady like that. Maybe like</p> <p>10 three months.</p> <p>11 Q Okay. When did you start noticing issues with</p> <p>12 the overlapping hours when Ms. Cruz was given care to</p> <p>13 Ms. Melendez?</p> <p>14 A No, there was no overlapping with Melendez. It</p> <p>15 started off with the Izique's --</p> <p>16 Q With the Izique?</p> <p>17 A That's when everything started.</p> <p>18 Q Okay. And when you say overlapping hours, you</p> <p>19 were saying that the only way she could have overlapping</p> <p>20 hours is if she was working with another patient for All</p> <p>21 VIP, correct?</p> <p>22 A Well, she had three clients. Remember she had</p> <p>23 three clients, and when she decided to go full-time with</p> <p>24 the Izique's she, you know, she didn't no longer work</p> <p>25 with Melendez. She --</p>	<p style="text-align: right;">Page 73</p> <p>1 But she -- there was more than one aide there.</p> <p>2 It was not just Ms. Cruz, there was also other aides,</p> <p>3 two more aides there. So, that's how it was --</p> <p>4 Q Same time.</p> <p>5 A -- split.</p> <p>6 Q At the same time?</p> <p>7 A At certain days of the time, yes like in the</p> <p>8 morning one will be there. I have to schedule one here.</p> <p>9 Q Okay. Let me see if I can bring it up because</p> <p>10 I think I have --</p> <p>11 A Because they had a lot of hours, she didn't</p> <p>12 work the whole hours.</p> <p>13 Q Okay. Let me do this. I'm going to make what</p> <p>14 I call Exhibit B.</p> <p>15 (Thereupon, Plaintiff's Exhibit B was entered</p> <p>16 into the record.)</p> <p>17 BY MR. CUMMINGS:</p> <p>18 Q And let me see if this helps you explain what</p> <p>19 I'm talking about because I already have a document. If</p> <p>20 not, then, you know, you can let me know. Can you see</p> <p>21 the document I'm showing you on my screen right now?</p> <p>22 A Yeah, that's the one I sent off, yes.</p> <p>23 Q Okay. Got it. All right. So, if you can, I</p> <p>24 guess just explain this to me. So, at the first, let me</p> <p>25 just explain what this is.</p>

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1 I'm looking at a document, an Exhibit B that  
2 says HHA Exchange and the top left-hand corner. And in  
3 the middle it says, Patient Calendar.  
4 There's a patient name circle that says,  
5 Izique A. Cesar. And this is a eight page document and  
6 it just has like a lot of green boxes that look like a  
7 schedule.  
8 So, Ms. Ramirez, looking at this first page,  
9 can you please explain what I'm looking at here?  
10 A Okay. Those are the hours. If you see it  
11 says 3 o'clock to 5 o'clock in the morning.  
12 Q On Friday, the first?  
13 A Yeah, if we're looking at Friday the first.  
14 Q Right, for July.  
15 A Let me find that one. If you could go up a  
16 little, please?  
17 Q Now, when you say -- yeah. Okay.  
18 A Yeah, like that.  
19 Q All right.  
20 A Okay. Because automatically -- the system  
21 will automatically change the hours. So, let's say if  
22 I -- if it's a 24 hour case, right this one is divided  
23 with Monica. Monica did the night shift. You see where  
24 it says Monica Murphy?  
25 Q Yes.

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1 A If I'm not mistaken, she went in, there was  
2 times she went in at 8 o'clock and left at 05:00 in the  
3 morning.  
4 Q Okay.  
5 A And then Valdivieso will come in at 09:00.  
6 Q So, let me just ask a couple of questions. And  
7 this might help when we look at the July patient  
8 calendar for Cesar Izique because that's all, this is  
9 for just Mr. Izique, correct?  
10 A Mr. and Mrs. Izique, yes.  
11 Q Okay. Now, when I go back up one page to the  
12 top, it's -- there's only one patient name though. So,  
13 for right now, we're just looking at the patient  
14 calendar from Mr. Izique, right?  
15 A Yes, that's correct.  
16 Q Okay. And then I see your name as the  
17 coordinator. So, does that mean that you are the one  
18 that's coordinating the care between Medicare and the  
19 patient?  
20 A That's correct.  
21 Q Okay. Now, what I want to ask you about is  
22 where it says last three authorizations and it says  
23 Humana and Parenthesis, RGA. What does that mean?  
24 A The Humana.  
25 Q Right.

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1 A Or the RGA?  
2 Q Well, I know Humana's a Health insurance  
3 agency, but are they the one that's administering the  
4 Medicare policy?  
5 A Yeah. If you see RGA, it will be like us, our  
6 office, you know. And then because Brower is BWD, it  
7 automatically gives a code. Humana is the insurance.  
8 This is the authorization, and as you can see, it gives  
9 you a service code.  
10 The T1019 is personal care companion and  
11 homemaking at the bottom where it says, Max, those are  
12 units. They're not counted as hours, they're counted as  
13 units.  
14 Q Okay. Got it. And so, PCA stands for  
15 Personal Care?  
16 A Yes. PCA is personal care.  
17 Q CONP. What does that stand for?  
18 A Companionship --  
19 Q Okay. And then --  
20 A Companion.  
21 Q HMK?  
22 A It's Homemaking.  
23 Q Homemaking. What services was Cruz Valdivieso  
24 providing to Mr. Izique?  
25 A All of them.

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1 Q All of them?  
2 A All the -- yeah, all caregivers have to do all  
3 three.  
4 Q All three. All right. And now when we go  
5 down, and so the max, you've mentioned max units, and  
6 that says NA, but when we go over to the column that  
7 says Max, what Medicaid authorized was 285 hours for  
8 personal care?  
9 A Yeah, that's units. Those are not hours.  
10 Q Oh, units. Okay. I see Units.  
11 A Yeah.  
12 Q Okay. And then how do units break down in the  
13 hours?  
14 A Four units, it's one hour.  
15 Q Four unit. One hour.  
16 A And.  
17 Q Okay. I see. Okay. Now -- and so now what  
18 your job is because Mr. Izique has 24-hour care, you  
19 have to determine which All VIP providers are going to  
20 give this care on a rolling basis?  
21 A That's correct, Counsel.  
22 Q Okay. And then you come up with -- so the  
23 schedule that we're looking at with all of these green  
24 boxes, you created that schedule?  
25 A Yeah, I create the schedule according to what

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1 the client -- the schedule that the client gives me. So,  
 2 if she wants them to start at 07:00, then at 07:00, you  
 3 know, it's the clients, it's according to what the  
 4 client needs are what they want.  
 5 **Q Understood. Okay. And so --**  
 6 **A** I don't make up the schedule -- I'm sorry.  
 7 **Q Okay.**  
 8 **A** I don't make up.  
 9 **Q You don't make up the schedule. You just --**  
 10 **well, the client says, okay. I need somebody from this**  
 11 **hour to this hour and then you're not --**  
 12 **A** And then I --  
 13 **Q Sorry, go ahead.**  
 14 **A** To input -- and then my job is to input it in  
 15 the -- what you see right here.  
 16 **Q Let's look at Friday, July 1st here, this one**  
 17 **column. We see that Ms. Cruz, what does the S stand**  
 18 **for, the S here next to 03:00 to 05:00.**  
 19 **A** When it's billed. And when it's not billed,  
 20 it's the B stands for when it's billed hours --  
 21 services, I'm sorry.  
 22 **Q Services.**  
 23 **A** Services, and when you see the bill is when  
 24 it's the B is for when it's billed.  
 25 **Q Billed. Okay. And are you referring to**

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1 **something on your computer to get that answer?**  
 2 **A** No, because I have the paperwork right here,  
 3 the same thing you have.  
 4 **Q Okay. But how'd you just find out what**  
 5 **services meant?**  
 6 **A** What do you mean, how did I find out?  
 7 **Q Well, when I asked you first what estimate it**  
 8 **looked like, I thought you looked at something to find**  
 9 **out that it says --**  
 10 **A** No, I have my paperwork here. No, because  
 11 right now I'm working with two system and it's totally  
 12 different from -- I'm working still with HHA, but we're  
 13 switching to Caresmart. So, I have my -- with two  
 14 different settings now. Okay.  
 15 **Q But that --**  
 16 **A** Yeah, that service and when need for -- is for  
 17 billed.  
 18 **Q Okay. Got it. All right. So, what it means**  
 19 **is that Ms. Cruz provided the service from 03:00 to**  
 20 **05:00 and two hours were billed?**  
 21 **A** It'll show billed when you see a green like  
 22 that. So, you see when it's green like that?  
 23 **Q Um-hum.**  
 24 **A** I can see where it says -- it'll say Billed.  
 25 **Q Billed. Okay. Now, on this particular day,**

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1 **Friday, July 1st, it looks like Ms. Cruz was here from**  
 2 **03:00 to 05:00, 05:00 to 06:00, 06:00 to 08:00. And**  
 3 **then at 12 o'clock, a different caregiver came named,**  
 4 **Janilanda. Is that right?**  
 5 **A** Yeah, that's Jenny.  
 6 **Q Okay.**  
 7 **A** But if you go up, because you see it breaks it  
 8 down, she -- because if you put 8 o'clock, if she  
 9 started at -- Valdivieso, if she started at 6:00, you  
 10 said 06:00 to 08:00, you see.  
 11 **Q Right.**  
 12 **A** It doesn't mean that sh -- you know, she's  
 13 went in at 3 o'clock in the morning. I don't know if I  
 14 explained myself, if she went in at 6 o'clock at night,  
 15 the system automatically put the later time on the top.  
 16 **Q Well, where it says 03:00, does that mean --**  
 17 **A** At --  
 18 **Q 3 o'clock in the morning?**  
 19 **A** 3 o'clock in the morning, yes.  
 20 **Q 3 O'clock in the morning. Okay. And then --**  
 21 **A** So, yeah.  
 22 **Q So, she would've got there at 3 o'clock in the**  
 23 **morning that day?**  
 24 **A** No, so that as you see how it, the bottom says  
 25 06:00, but you see on the top it says 3 o'clock in the

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1 morning --  
 2 **Q Right.**  
 3 **A** -- and at the bottom, you see it says 6.  
 4 **Q Right.**  
 5 **A** So she -- there was times she went in at  
 6 6 o'clock in the morning and there were other times that  
 7 she went in at 8 o'clock at night and will do 8, 9, 10,  
 8 all the way till 5 o'clock in the morning.  
 9 **Q Okay. So, are you saying on this particular**  
 10 **day that she -- let me ask you this, what time did**  
 11 **Ms. Cruz start providing service to the IZIQUE -- Cesar**  
 12 **IZIQUE on Friday July 1st?**  
 13 **A** Can you go up?  
 14 **Q Up.**  
 15 **A** Okay. No, the way you had the whole thing  
 16 where I can see the whole thing --  
 17 **Q Right.**  
 18 **A** There you go. So, she started in the morning,  
 19 06:00 to 08:00 in the morning, and then the au --  
 20 because these are divided into authorizations, 06:00 to  
 21 08:00, 05:00, she ended, she started at 06:00, ended at  
 22 05:00.  
 23 **Q Started at 6 --**  
 24 **A** And 6, then when you see 5, 6, 2, 3, 4, 5, she  
 25 did 5 hours starting at 06:00.

<p style="text-align: right;">Page 82</p> <p>1 Q But I don't get it, it seems to me that</p> <p>2 she's -- so what's this 03:00 in the morning at the top</p> <p>3 then what does that mean?</p> <p>4 A What do you mean, what does that mean?</p> <p>5 Q Well, I mean, you're saying she started at</p> <p>6 06:00 in the morning then what does it mean then?</p> <p>7 A 06:00 in the morning because it goes by</p> <p>8 authorization 06:00 to 08:00, so were there two hours --</p> <p>9 Q Okay.</p> <p>10 A So, that means there's something, it rolled</p> <p>11 over where's -- I need the other part of that one what</p> <p>12 day was that, July.</p> <p>13 Q It says, I'm just looking --</p> <p>14 A The calendar -- if you see the calendar.</p> <p>15 Q Right.</p> <p>16 A That was July, so I need June because</p> <p>17 sometimes when it's like if she goes in Thursday at</p> <p>18 08:00 at night and she ends and she finishes the next</p> <p>19 day, Friday at 05:00, it rolls over to the next day.</p> <p>20 Q I see what you're saying, so basically what</p> <p>21 you're saying is, okay. Like June 31st would've been</p> <p>22 that Thursday before.</p> <p>23 A Yes, and then the hours after midnight it</p> <p>24 rolls over to the following day.</p> <p>25 Q I see, okay. So, basically she was there June</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Who did?</p> <p>2 A Daisy.</p> <p>3 Q What hours did Jenny work that day?</p> <p>4 A Jenny worked 08:00 a.m. to 12:00.</p> <p>5 Q Okay. But that's -- so in one day there are</p> <p>6 two different All VIP caregivers providing service to</p> <p>7 Mr. Izique, right?</p> <p>8 A That's correct, and then a third when the</p> <p>9 hours were when Daisy decided not to just do less hours</p> <p>10 then a new caregiver came.</p> <p>11 Q And that was Monica?</p> <p>12 A No, because Daisy -- what happened is that's</p> <p>13 why you see the calendar different Daisy, like at</p> <p>14 5 o'clock in the morning, 09:00 to 05:00 or because</p> <p>15 sometimes she covered Monica.</p> <p>16 If Monica was out, then she did the Monica's</p> <p>17 schedule, but that was not her regular schedule that</p> <p>18 was -- this will kind of you see Murphy 5 o'clock in the</p> <p>19 morning let me go into that one what month is that?</p> <p>20 Q I have this as going back up to the top of</p> <p>21 Exhibit B, I have this as July 2022.</p> <p>22 A No, it says 11:15, right or no, is it July?</p> <p>23 Q July. I see report date, but I don't know</p> <p>24 what that means this says the care is being provided for</p> <p>25 July so I don't.</p>
<p style="text-align: right;">Page 83</p> <p>1 31st at 3 o'clock in the morning.</p> <p>2 A No, so that means she was there probably</p> <p>3 Thursday that's what I need for June, let me -- I have,</p> <p>4 okay. Let me see if I have it here.</p> <p>5 Q And I apologize there's no June 31st, there's</p> <p>6 only June 30th.</p> <p>7 A June, the following.</p> <p>8 Q So, let's say Thursday was June 30th and 2022,</p> <p>9 was she working on Thursday June 30th.</p> <p>10 A Okay. Let me see give me one second, okay.</p> <p>11 There you go, if you go to the bottom, I don't know if</p> <p>12 you have it on yours, I don't know why it didn't go, but</p> <p>13 if you go to -- I have the same calendar, if you have</p> <p>14 this one it has the same hours.</p> <p>15 Q Just for the record, can you please just tell</p> <p>16 me what you're showing me what's at the top?</p> <p>17 A It's the same thing, but it's the whole</p> <p>18 calendar it shows that the time which she started, so</p> <p>19 that way you can understand that 3 o'clock in the</p> <p>20 morning and the 5 o'clock in the morning, you know, so</p> <p>21 that way you can understand what time she started that.</p> <p>22 Q Okay. Now, what hours did Jenny work on that</p> <p>23 day on Friday, July 1st.</p> <p>24 A So, that means she probably did 9 to 5,</p> <p>25 09:00 p.m. to 05:00 a.m.</p>	<p style="text-align: right;">Page 85</p> <p>1 A I just want to be in the same page as you so</p> <p>2 that way I have both pages, you know, not just the first</p> <p>3 there all the way to the bottom.</p> <p>4 Q All right. Well --</p> <p>5 A I mean she did cover, she that's why you see</p> <p>6 it like in -- you know, all like that, but that was not</p> <p>7 her permanent case -- permanent hours, her permanent</p> <p>8 hours were after Jenny.</p> <p>9 After Jenny left, then she took the case and</p> <p>10 after she left, approximately 9 o'clock that when Monica</p> <p>11 came, Monica did 09:00 to 05:00 a.m. That was Monica's</p> <p>12 schedule 09:00 p.m. to 05:00 a.m.</p> <p>13 Q All right. Do you have an example of Ms. Cruz</p> <p>14 submitting overlapping hours?</p> <p>15 A I can't put them here because it's not going</p> <p>16 to let me schedule it, you know, so you can't see the</p> <p>17 overlapping because it's not going to be recorded.</p> <p>18 Q Right.</p> <p>19 A It's just going to --</p> <p>20 Q I don't mean -- yeah, I don't mean in the HHA</p> <p>21 exchange sheet that we were just looking at in Exhibit</p> <p>22 B, because you are inputting the hours for the</p> <p>23 caregivers in HHA exchange, right?</p> <p>24 A That's correct.</p> <p>25 Q Okay. And so, the time sheets would show</p>

<p style="text-align: right;">Page 86</p> <p>1 where overlapping hours are, right?</p> <p>2 A No, the system.</p> <p>3 Q Well --</p> <p>4 A The system will show because she was --</p> <p>5 remember she was putting extra hours in her time sheet</p> <p>6 saying that she worked those extra hours. So, I was</p> <p>7 going according to the authorization, and that's when</p> <p>8 I'm like, "But no, I can't put those extra hours."</p> <p>9 So, remember it was two clients, so I</p> <p>10 constantly had to divide, tell the family member, your</p> <p>11 dad had -- your mom had 71 hours or your dad has, you</p> <p>12 know, 50 something hours.</p> <p>13 So, you know, I constantly had to tell that</p> <p>14 authorization is separate from your mom's authorization.</p> <p>15 But what happened was the confusion came when she</p> <p>16 started putting extra hours on her time sheet and then</p> <p>17 that --</p> <p>18 Q Is the authorization given per month?</p> <p>19 A No, authorization usually it depends six</p> <p>20 months to a year and it could change -- you know,</p> <p>21 author -- the authorization was increased by a few hours</p> <p>22 for the Izique's and that's when we decided to -- you</p> <p>23 know, add another caregiver.</p> <p>24 Q How does All VIP get paid by Medicaid?</p> <p>25 A In what way like how, like so deposit or check</p>	<p style="text-align: right;">Page 88</p> <p>1 invoices to Medicaid or to health or private health</p> <p>2 providers?</p> <p>3 A I only billed a private one and I only have</p> <p>4 one and that one is faxed, I do the invoice -- you know,</p> <p>5 time sheet is sent and I print out the invoice and fax</p> <p>6 it over.</p> <p>7 Q Okay. And do the healthcare providers require</p> <p>8 that the time sheet be provided with the invoice?</p> <p>9 A No, they have no access to the invoices no,</p> <p>10 the care providers?</p> <p>11 Q No, not the care provider not like Ms. Cruz or</p> <p>12 Jenny or whatever what I'm saying is the healthcare --</p> <p>13 A The care -- us, the healthcare provider, the</p> <p>14 agency, okay.</p> <p>15 Q The agency, right like so the Medicaid do they</p> <p>16 require that the caregiver's time sheets be submitted</p> <p>17 with the invoice?</p> <p>18 A No, but they do require for us to keep it in</p> <p>19 the client's file.</p> <p>20 Q Okay. Because they may do an audit and they</p> <p>21 might want to see it later.</p> <p>22 A Exactly.</p> <p>23 Q So, essentially whatever hours are submitted</p> <p>24 in an invoice to Medicaid, they just take -- you know,</p> <p>25 on face value that those are correct.</p>
<p style="text-align: right;">Page 87</p> <p>1 or --</p> <p>2 Q No, that's a good question, but let me try to</p> <p>3 break this down. When a Medicare case manager calls you</p> <p>4 and says, "I have this patient," at that time then a</p> <p>5 care plan is created and the authorization is given for,</p> <p>6 let's say, six months.</p> <p>7 So, does Medicaid pay All VIP for six months</p> <p>8 in advance or does Medicaid --</p> <p>9 A No.</p> <p>10 Q Okay. Yeah, so explain what has to be</p> <p>11 submitted to Medicaid or to Humana or whatever the</p> <p>12 company is in order for All VIP to get paid.</p> <p>13 A That will be a good question for Liz to</p> <p>14 answer, but as I'm aware an invoice is -- you know, it's</p> <p>15 printed out and it is sent, you know, everything is done</p> <p>16 electronically, so I'm pretty sure an invoice is sent to</p> <p>17 Medicaid.</p> <p>18 Q Okay. Understood. And that invoice is based</p> <p>19 on the hours that the caregivers are submitting through</p> <p>20 their time sheets?</p> <p>21 A The hours that they actually worked that's</p> <p>22 correct, not hours that are not, you know --</p> <p>23 Q Authorized.</p> <p>24 A Yes.</p> <p>25 Q Okay. So, you don't deal with submitting</p>	<p style="text-align: right;">Page 89</p> <p>1 A Exactly.</p> <p>2 Q I see. All right. Now we talked about Ms.</p> <p>3 Melendez, and that's when Ms. Cruz started complaining</p> <p>4 about the debts and that's when you started noticing</p> <p>5 issues with overlapping hours, or you only noticed that</p> <p>6 she was overlapping hours with the Izique's?</p> <p>7 A No, I noticed her doing the overlapping hours.</p> <p>8 Q With which client --</p> <p>9 A She was like -- with the Izique.</p> <p>10 Q Just with the Izique?</p> <p>11 A Yes, and like I said, it was because she was</p> <p>12 putting the hours, the private hours that she was doing</p> <p>13 with them, putting them in the time sheet, and she was</p> <p>14 making the math.</p> <p>15 And the thing is that she made the time sheet</p> <p>16 and then she'll make it like corrected, like, you know,</p> <p>17 okay. This is the according to the authorization, but</p> <p>18 she still had in her head the hours that she had</p> <p>19 privately, like she added all that "How much I'm going</p> <p>20 to get paid."</p> <p>21 Q Let's talk about the --</p> <p>22 A And that's what she expected.</p> <p>23 Q Let's talk about the private hours when we say</p> <p>24 private hours, did she have a separate arrangement with</p> <p>25 the Izique's daughters that you pay me and then I'm just</p>

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1 going to stay these extra hours and work, is that what  
 2 you mean?  
 3 A I found out they're not allowed to do that, I  
 4 found out after the end of all this, after I told her,  
 5 "We don't owe you anything, everything shows that we  
 6 paid you all the hours."  
 7 And she said, "No, I work you owe me three  
 8 hours on this day you owe me" and I said, "But show me  
 9 where I said," and that's when she told me.  
 10 Q That she was working private hours?  
 11 A Yes.  
 12 Q But when you say private hours, does that mean  
 13 that there's an insurance company involved --  
 14 A No, that the daughter was paying out of her  
 15 pocket.  
 16 Q Just paying out of pocket?  
 17 A Yeah, her daughter was paying out of pocket  
 18 and they're not allowed to do that and it slipped and  
 19 it -- and I told the daughter. She said that -- you  
 20 know, she's a little bit confused because, you know,  
 21 she's counting the private hours that she said that you  
 22 pay her extra like three hours extra.  
 23 And that's what she always complained about  
 24 three hours, you know, extra and she says it's because  
 25 you are giving her private hours. She goes, "I told her

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1 that oh my gosh, she's not supposed to say that I told  
 2 her that not to write those hours on her time sheet. I  
 3 already explained to her."  
 4 Q Okay. And so let me give an example, so we  
 5 are on the same page on -- you know, let's -- I'm just  
 6 going to make up a day, right?  
 7 July 5th Ms. Cruz is supposed, she's  
 8 authorized by Medicaid and through All VIP to work an  
 9 eight hour shift, right. So, she works that eight hour  
 10 shift, so now she has on her time sheet eight hours that  
 11 she's supposed to be paid for, correct?  
 12 A Yeah, eight hours if she -- yeah, the  
 13 authorization says eight hours, that's how much she  
 14 needs to get.  
 15 Q But your understanding is that now she had a  
 16 separate side agreement with the Izuque's daughter to  
 17 work private hours. And so if she worked an extra three  
 18 hours, now she made a separate arrangement and she got  
 19 paid three hours by them.  
 20 Now you said she wasn't supposed to do that,  
 21 who says that she's not supposed to do that?  
 22 A Well, in the contract she knows, and she knows  
 23 because I told her specifically you know, you -- and  
 24 plus the client is well known that they can't do that.  
 25 So, she knows it specifically because I told

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1 her before she started the case and she's on the  
 2 contract. She knows because I explained it to her and  
 3 not only that, I told her verbally and she says, "It --  
 4 you know, it slipped."  
 5 Q Right.  
 6 A They had secretly and it just slipped.  
 7 Q So, by the private work that was being done,  
 8 is that a violation of Ms. Cruz's contract with All VIP?  
 9 A Yes.  
 10 Q And then on the client's side, did the client  
 11 violate their con -- meaning via Izuque's daughter, did  
 12 she violate her contract with All VIP?  
 13 A Yes, well she -- yes, she knows that she's not  
 14 supposed to do private. They know.  
 15 Q Okay. And then from a Medicaid standpoint, is  
 16 there a violation of any kind of state or federal laws  
 17 because of the private hours that were being worked?  
 18 A The thing is, if she's hired somebody else  
 19 that's not from the agency that's a -- you know, they  
 20 can do whatever they want.  
 21 Q I see.  
 22 A So, if it's one of our -- you know, of -- you  
 23 know, one of our contractor because they're independent  
 24 contractor, then yes, because -- you know, they have to  
 25 let us know.

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1 Q I see. Got it. Because essentially what  
 2 they're doing is they're cutting All VIP out of the  
 3 payment process, right. If Ms. Cruz is working private  
 4 hours with the Izuque's then All VIP doesn't get a cut  
 5 of that money.  
 6 A And another thing that has to be is very  
 7 important if she's there privately and we don't know,  
 8 okay. Let's suppose that -- you know, with us, she's  
 9 there eight to five, an example and the Izuque's paying  
 10 her privately 03:00 to 08:00.  
 11 Okay. 03:00 in the morning to 08:00 and she's  
 12 doing that privately something happens to the client,  
 13 what are they going to say All VIP is responsible  
 14 because she's my caregiver you know, so that's -- you  
 15 knows, that's a liability --  
 16 Q It a liability problem, there's a --  
 17 A It's a liability -- I see her more as a  
 18 liability billing --  
 19 Q Right.  
 20 A Because if something happens, what is the case  
 21 manager going to say --  
 22 Q Right.  
 23 A Because those authorization hours in the night  
 24 because they couldn't use the hours however they like,  
 25 they could use it -- you know, whatever time and you

<p style="text-align: right;">Page 94</p> <p>1 know, the case manager's going to say, "Hey, you know 2 what happened here?" 3 <b>Q Right.</b> 4 A "What am I going to say, you know, but she 5 started at eight I don't know what happened, what she's 6 doing there at that time." 7 <b>Q Got it. And so if a caregiver is providing 8 service during unauthorized times then whatever happens 9 is not going to be covered by All VIP's Insurance.</b> 10 A And not -- I'm pretty sure as well as, they 11 have to have their own liability as well the caregivers. 12 <b>Q Caregivers that they have their own liability.</b> 13 A Yeah. 14 <b>Q Okay.</b> 15 A Yeah, we do -- we have our liability, but they 16 have to have their own liability because they're 17 independent contractors. 18 Something happens, you know, the client cannot 19 sue her she has insurance. 20 <b>Q I understood. So, let's say Ms. Cruz is 21 working during the unauthorized hours and something 22 happens to one of the Iziqie then the lawsuit should be 23 against Ms. Cruz and not All VIP.</b> 24 A That's correct. 25 <b>Q But what if Ms. Cruz is working authorized</b></p>	<p style="text-align: right;">Page 96</p> <p>1 pays \$20 to the agency an hour then from those \$20 we 2 pay the caregiver. 3 <b>Q Understood. Okay.</b> 4 A But at that time -- I'm sorry, at that time it 5 was less than \$20, I'm just giving you an example. 6 <b>Q No, I get it that's the example, so like if 7 it's \$20 and this cruise is getting 13, then All VIP is 8 getting the other \$7 per hour.</b> 9 A Yeah, and at that time it was less, now it's 10 \$20 I -- as I know it's \$20 -- 11 <b>Q Right.</b> 12 A So, that's why the caregivers are getting paid 13 15. 14 <b>Q 15, and so then All VIP clears that the five 15 per hour for each caregiver?</b> 16 A That's correct. 17 <b>Q That's correct. Okay. All right. And then, 18 does All VIP pay travel time for to the independent 19 contractors or to the caregivers?</b> 20 A No, travel time I explained to the -- that's 21 one of the things that we explained clearly to the 22 caregiver and also to the client. 23 If they want the caregiver to take the client 24 to a doctor's office or to do errands they know they 25 have to pay for the gas because Medicaid do not pay for</p>
<p style="text-align: right;">Page 95</p> <p>1 hours and something happens to one of Iziqie's because 2 she has her own insurance with the Iziqie's still just 3 sue -- Ms. Cruz anyway? 4 A Yes, well -- yes, but we're still liable with 5 Medicaid because Medicaid is going to say, did you give 6 them those extra hours what happened here, they're going 7 to do a report. 8 <b>Q I see. I understand.</b> 9 A No, matter what they're going to do a report 10 because it's according to authorizations, the hours. 11 <b>Q Okay. Now let's talk about the pay because 12 I'm not sure you answered the question I asked before 13 when -- if Ms. Cruz is making \$13 an hour, the amount 14 that she's paid is coming from the Medicaid 15 authorization?</b> 16 A That's correct. 17 <b>Q Okay.</b> 18 A Medicaid, yes. 19 <b>Q How does All VIP make a profit if they're 20 paying Ms. Cruz \$13 an hour is medic -- is All VIP 21 billing Medicaid let's say \$15 an hour or something.</b> 22 A Okay. I see what you're saying I'm sorry, I 23 didn't quite understand the question. Okay. So, we 24 have Medicaid gives us a pay -- a certain amount pay 25 rate. So, let's say right now an example, if Medicaid</p>	<p style="text-align: right;">Page 97</p> <p>1 gas -- 2 <b>Q Okay.</b> 3 A They don't give us gas money. 4 <b>Q Do any private insurers pay for travel time 5 for caregivers?</b> 6 A Not that I know of, no. 7 <b>Q All right. And so because of that then 8 independent contractors are told that you have to cover 9 all of your expenses?</b> 10 A Not that -- not if they have to take the 11 client somewhere you know, they have to make an 12 agreement with you know, like I said, I call the family 13 member or whoever's in charge of client. 14 And I tell them if she has to go you know, to 15 the store or you know, you guys have to give her gas 16 money if it's around the corner you know, they just do 17 the favor they don't ask for forgive money. 18 <b>Q Right. But, outside of the time that 19 authorized hours of being worked, let's say for example, 20 okay. If Ms. Cruz has to be to the Iziqie house at 21 3 o'clock in the morning, she does not get paid for the 22 time from her house to the Iziqie's house that travels?</b> 23 A No, travel time. 24 <b>Q And no caregivers are paid for any travel 25 time --</b></p>

<p style="text-align: right;">Page 98</p> <p>1 A Travel time.</p> <p>2 Q -- to and from the patient's home?</p> <p>3 A No.</p> <p>4 Q Okay. All right. Because if you paid for</p> <p>5 that travel time, then that would eat into the profit</p> <p>6 that All VIP is making, correct?</p> <p>7 A Of course.</p> <p>8 MR. GOLDBERG: Object to form.</p> <p>9 BY MR. CUMMINGS:</p> <p>10 Q Okay.</p> <p>11 A Yes.</p> <p>12 Q All right. So, I think we covered Ms. Soto,</p> <p>13 we covered Ms. Melendez, and then we covered the</p> <p>14 Izique's and you said those were the only people that</p> <p>15 she saw -- just give me a second.</p> <p>16 A Okay. And when you're done, can I also say</p> <p>17 something?</p> <p>18 Q No, you can go ahead and say it now. Go ahead.</p> <p>19 A Okay. This is what last day I spoke to Anna</p> <p>20 Maria or both of them, they were both on -- they always</p> <p>21 on two -- one three way, we always did it like a three</p> <p>22 way.</p> <p>23 Q The Izique's daughters?</p> <p>24 A Yes, Anna and Susana, they told me that they</p> <p>25 felt very bad and sorry for you know, for Daisy or for</p>	<p style="text-align: right;">Page 100</p> <p>1 threatened also Melendez to pay her and I said pay her</p> <p>2 what, and also to threaten to come, ask for her social</p> <p>3 security, her ID, so she can testify in Court.</p> <p>4 And she goes "I'm not going over there to</p> <p>5 testify for what."</p> <p>6 Q Ms. Melendez said that?</p> <p>7 A Yes, Melendez told me.</p> <p>8 Q Okay. Was --</p> <p>9 A That she did that.</p> <p>10 Q Was Ms. Cruz working private hours for</p> <p>11 Ms. Melendez also?</p> <p>12 A No, she was not working private hours, but</p> <p>13 she -- I don't know what she told her that to pay her</p> <p>14 she never had private hours with Melendez. Melendez</p> <p>15 will never pay for private hours.</p> <p>16 Q So, Ms. Melendez was on -- I'm sorry, Cruz was</p> <p>17 only doing authorized hours from Ms. Melendez, but</p> <p>18 Ms. Melendez said that Cruz asked her to pay her</p> <p>19 separately?</p> <p>20 A No yeah, she told her to ask -- she asked her</p> <p>21 to pay her because the thing is that she kept saying</p> <p>22 they owe me hours -- they owe me hours, those hours were</p> <p>23 never old with Melendez --</p> <p>24 Q With Melendez. Okay.</p> <p>25 A Everything had to do -- Yeah, everything had</p>
<p style="text-align: right;">Page 99</p> <p>1 Cruz, that they felt very sorry that she went there</p> <p>2 crying, saying that we didn't want to pay her. And I</p> <p>3 said, what do you mean I told her to go pick up the</p> <p>4 check so she says, why wouldn't she go pick up the check</p> <p>5 because she knew that she was wrong.</p> <p>6 She was putting hours that -- you know, like I</p> <p>7 said in the beginning so the Izique's told me that they</p> <p>8 were going to pay her because she kept threatening them,</p> <p>9 "You are going to pay me, you need to pay me." So, they</p> <p>10 felt you know, oh, my gosh, she's going to leave I need</p> <p>11 her for my parents, "You're going to pay me."</p> <p>12 So, the Izique told me that they were going to</p> <p>13 pay her \$1,000, okay. And then that they were going to</p> <p>14 sue us so we can pay her the \$1,000. So, they gave --</p> <p>15 the a Cruz a \$1,000 when Cruz didn't want to go pick up</p> <p>16 the check -- a paper check, you know, she didn't want to</p> <p>17 pick it up so then --</p> <p>18 Q Go ahead.</p> <p>19 A Yeah, and I said -- and I told her, you know,</p> <p>20 we -- it's not that we don't want to pay you, I told you</p> <p>21 to go pick up a check because once we have to fix the</p> <p>22 authorization, like I said with Soto, I told her you --</p> <p>23 it doesn't, you don't get it Friday, like the next day I</p> <p>24 told her.</p> <p>25 So, she asked the Izique's to pay her she</p>	<p style="text-align: right;">Page 101</p> <p>1 to do with her, but she covered, remember I was telling</p> <p>2 you she worked Monday through Friday and that Monday</p> <p>3 through Thursday, and she put down that she worked</p> <p>4 Friday and she didn't work Friday.</p> <p>5 Q Understood.</p> <p>6 A But she kept telling her, "Pay me, pay me."</p> <p>7 Q Okay. And so, basically you're saying that</p> <p>8 Ms. Cruz was trying to extort money out of the</p> <p>9 patients --</p> <p>10 A Yes.</p> <p>11 Q -- for hours that she did not work.</p> <p>12 A She works -- I don't know what private hours</p> <p>13 she did she was -- I don't know --</p> <p>14 Q Okay.</p> <p>15 A -- I just know for the hours that -- you know,</p> <p>16 she worked with us -- she was getting paid and she got</p> <p>17 overpaid a couple of times, and I said, "You got</p> <p>18 overpaid and, you know, and I just noticed on your</p> <p>19 paycheck that you got overpaid I said, and you never</p> <p>20 reported it."</p> <p>21 Q What -- how would some -- how would a</p> <p>22 caregiver be overpaid?</p> <p>23 A Easily she was -- like she say, "I work this</p> <p>24 hour" you know, and she didn't work it and we paid her</p> <p>25 that's being overpaid.</p>

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1 She didn't -- you didn't, because that was the  
2 reason she didn't clock in and clock out she was making  
3 time sheet's all the time and putting hours that she  
4 didn't work I said, you didn't work that day and why  
5 did -- and you got paid for it.  
6 **Q Right. How would she ever be able to overbill**  
7 **if the authorization was already set?**  
8 A No, I think you're not understanding, okay.  
9 So, let's say -- let's put an example like Melendez  
10 because that's what happened with the Melendez.  
11 She put on her time sheet that she worked  
12 Monday through Friday suppose or Monday through Saturday  
13 and Melendez authorization is Monday through Friday, she  
14 was not clocking in.  
15 And I told her, "If you don't clock in and  
16 clock out, you're not going to get paid anymore, we're  
17 going to stop the checks." She put hours when I  
18 confirmed she had put hours that she didn't work with  
19 Melendez and she got paid for them.  
20 So, when I went to confirm it with Melendez  
21 because I was already getting very suspicious, she was  
22 all over with her time sheet and the hours with the  
23 Izique and Melendez and what she did with the Soto as  
24 well, working hours that I didn't -- that were not  
25 authorized.

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1 And I had her to call -- you know, to have him  
2 authorized, so this was a constant thing, putting hours  
3 over hours she was very confused of all the hours that  
4 she was working so at that --  
5 **Q Sorry, that's my question because if you are**  
6 **authorized in the hours, because you are the ki -- you**  
7 **are speaking with Medicaid and you know that, you know,**  
8 **whatever patient has this number of hours, you set those**  
9 **hours on a schedule for Ms. Cruz, does it matter what**  
10 **her time sheet says?**  
11 **Because she can never go over the number of**  
12 **hours that you have already told her or authorized,**  
13 **right, so aren't you always just comparing what was**  
14 **authorized to her time sheet and shouldn't it just be**  
15 **cut off at a certain number of hours anyway?**  
16 A Yeah, I don't think you are understanding --  
17 no, let's say not about the hours, about the days you  
18 know, that she was supposed to work. So, let's say like  
19 for example Melendez didn't call me to tell me that she  
20 was not going --  
21 **Q Absolutely.**  
22 A Cruz didn't call me to tell me that she was  
23 not going we have a lot of clients I cannot -- like  
24 every day call one by one.  
25 Does she go, does she go that's why it's very

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1 important for them to clock in. When this happened,  
2 Melendez told me on Monday and she told me she fell this  
3 what happened on August something she fell, I have a  
4 statement here and I said what do you mean--  
5 **Q Is that 2022?**  
6 A Yeah, 2000 -- yes, it was August 8th, 2022.  
7 **Q And when Ms. Melendez fell, Ms. Cruz was**  
8 **supposed to be working with her?**  
9 A I thought she was supposed to be there and she  
10 said --  
11 **Q And she was not?**  
12 A And she was not.  
13 **Q I see. And that's how you figured all of this**  
14 **out.**  
15 A Everything I said, okay. This is just a total  
16 mess and when I -- yeah.  
17 **Q Okay. And so, all right. Now you filled in**  
18 **the missing piece, and I think you explained this**  
19 **before. What was happening was Ms. Cruz was just not**  
20 **showing up to work, but she was putting in on her time**  
21 **sheet that she was there.**  
22 **So, from your point of view the authorized**  
23 **hours were being worked, it's just that she wasn't**  
24 **working them because she just wasn't going.**  
25 A Yeah, she was not completing the whole hours

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1 even with the Izique's.  
2 **Q Okay. And then --**  
3 A Even they liked her so much.  
4 **Q I see. And then because she wasn't clocking**  
5 **in and clocking out, there was no time record of real**  
6 **time when she was actually there. She was just given**  
7 **time sheets and the time sheet said whatever hours she**  
8 **wanted to put on it.**  
9 A Yes, she just did it by authorization and  
10 that's why I constantly had to call the Izique's, the  
11 daughter to confirm if she was there or if she wasn't  
12 there. And I also -- you know, asked the other  
13 caregivers that were there as well, did she release --  
14 you know, did she release you.  
15 **Q Okay. Understood. All right. So, now let's**  
16 **look at really quickly, I'm going to show you what I'm**  
17 **marking as Exhibit C and this is text messages.**  
18 (Thereupon, Plaintiff's Exhibit C was entered  
19 into the record.)  
20 BY MR. CUMMINGS:  
21 **Q This is a four page document, the first page**  
22 **says Daisy Valdivieso HHA from Thursday, August 4th at**  
23 **12:44 p.m. And then there's like a series of text**  
24 **message conversations going over four pages.**  
25 **Just for the record, this is Bates stamp**

<p style="text-align: right;">Page 106</p> <p>1 number VIP docs 2-4 and then going down to -7. So, the</p> <p>2 first thing I want to ask is, do you recognize the text</p> <p>3 messages that I'm showing you, Ms. Ramirez?</p> <p>4 A Yes, I do.</p> <p>5 Q Okay. Are these text messages between you and</p> <p>6 Ms. Cruz?</p> <p>7 A That's correct.</p> <p>8 Q All right. Are these screenshots from your</p> <p>9 phone?</p> <p>10 A If I'm not mistaken this is from the on-call</p> <p>11 phone.</p> <p>12 Q From the -- on the red on-call phone?</p> <p>13 A Yes.</p> <p>14 Q All right. In that red on call phone, did you</p> <p>15 have Ms. Cruz's Daisy Valdivieso HHA?</p> <p>16 A Yes, that's how we know if there are</p> <p>17 caregivers on the phone.</p> <p>18 Q Okay. Now, this is in Spanish, like I already</p> <p>19 have a general understanding of what's going on here,</p> <p>20 but could you please explain to me on this first page</p> <p>21 what the message is that's being sent and received?</p> <p>22 You don't have to translate it in Spanish for</p> <p>23 me, I just want you to remember this conversation and</p> <p>24 tell me what was happening here.</p> <p>25 A Okay. I have the same one let me read it over</p>	<p style="text-align: right;">Page 108</p> <p>1 A You're freezing up. Can you hear me?</p> <p>2 Q I can hear you, but I -- can you hear me now?</p> <p>3 A Yeah, I can hear you now, but you froze for a</p> <p>4 second.</p> <p>5 Q I froze for a second.</p> <p>6 A I think it's my connection because it said</p> <p>7 it's my connection.</p> <p>8 Q Okay.</p> <p>9 A Can you hear me?</p> <p>10 Q I can hear you.</p> <p>11 A Yeah.</p> <p>12 Q Okay. Everything's back to the way it was, so</p> <p>13 let me go back a little bit and just talk about the pay</p> <p>14 schedule.</p> <p>15 Basically what I was saying is if a caregiver</p> <p>16 works Monday through Friday on week 1, they get paid</p> <p>17 those hours at the end of Friday on week 2. Is that</p> <p>18 right?</p> <p>19 A That's correct if -- yes.</p> <p>20 Q Okay.</p> <p>21 A So, there were --</p> <p>22 Q Did Ms. Cruz have direct deposit?</p> <p>23 A Well, I think she did, but when it's hours</p> <p>24 that are being like corrected, sometimes they send a</p> <p>25 paper check, so she has to go paper check, yeah.</p>
<p style="text-align: right;">Page 107</p> <p>1 here.</p> <p>2 Q And specifically I'm referring to the</p> <p>3 conversation going from Thursday, August 4th to Monday,</p> <p>4 August 8th.</p> <p>5 A Remember I was telling you about that -- to --</p> <p>6 she picked up a check, a paper check you remember --</p> <p>7 Q What -- sorry.</p> <p>8 A Yeah, so she went to the West Palm Beach</p> <p>9 office to pick up the paper check.</p> <p>10 Q Okay. Now, what was -- what hours or what</p> <p>11 patient was that check for?</p> <p>12 A I don't remember.</p> <p>13 Q And you said before -- you stated before that</p> <p>14 caregivers get paid every Friday.</p> <p>15 A Every Friday.</p> <p>16 Q How much of a lapse is there between the</p> <p>17 service they provide and the check that they're getting</p> <p>18 on that Friday. Like, if I work Monday through Friday,</p> <p>19 that's not the -- that Friday I'm not getting paid for</p> <p>20 that week, right?</p> <p>21 A The next Friday, yeah.</p> <p>22 Q It's the next week, so if I work Monday</p> <p>23 through Friday this week, then you're --?</p> <p>24 A You're freezing up.</p> <p>25 Q Yeah, hello?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q All right. Now were there any times -- go</p> <p>2 ahead.</p> <p>3 A I'm sorry, but I'm not -- I can't -- I don't</p> <p>4 want to answer yes or no if she had direct deposit</p> <p>5 because it's been quite a while, so I don't remember if</p> <p>6 she did, so I don't want to give you a false, you know.</p> <p>7 Q Right. Now in this particular case, why would</p> <p>8 Ms. -- if we're looking at these text messages here, why</p> <p>9 wouldn't Ms. Cruz have had to go to Palm Beach to pick</p> <p>10 up a paper check?</p> <p>11 A Because that's where the checks come, it</p> <p>12 doesn't come to the Broward office. West Palm Beach</p> <p>13 office is a corporate office that's where they receive</p> <p>14 their paper checks.</p> <p>15 And then what I do is on Monday morning I go</p> <p>16 pick them up and I bring them here and then I call the</p> <p>17 caregivers, come pick up your check.</p> <p>18 Q Okay. But some caregivers do have direct</p> <p>19 deposit?</p> <p>20 A Yeah, most of them do.</p> <p>21 Q All right. And based on the text message,</p> <p>22 just that you're looking at here on page 1 of Exhibit C,</p> <p>23 you don't know which check this or which services this</p> <p>24 is for?</p> <p>25 A You mean for what date?</p>

<p style="text-align: right;">Page 110</p> <p>1 <b>Q Well yeah, I mean do you know what the issue</b>  2 <b>was with why she was picking up a paper check?</b>  3 A Like I said, the corrected hours that she  4 actually worked.  5 <b>Q But do you know -- and but you don't know for</b>  6 <b>which clients?</b>  7 A Yeah, it has to be for the Izuque's.  8 <b>Q How do you know that --</b>  9 A Because --  10 <b>Q How do you know that based on this text</b>  11 <b>message?</b>  12 A Because those were the hours that there was  13 constantly pronged with the overlapping she was putting  14 in hours that she was not supposed to, and she kept  15 claiming hours that was not in the authorization.  16 <b>Q Got it. Now on Monday, August 8th that bottom</b>  17 <b>text message in green, I see that you're sending her a</b>  18 <b>message about Angela Melendez. What is this in</b>  19 <b>reference to?</b>  20 A What I told you about that she was threatening  21 Angela and Angela called me Monday to tell me, you see  22 why it says Monday. Angela had called me on Monday to  23 tell me that, you know, what was going on and also she  24 told me that Daisy or Cruz -- Ms. Cruz, moved in next  25 door to her.</p>	<p style="text-align: right;">Page 112</p> <p>1 need to get paid, I need to get paid." And that's when  2 I said, "You see on Fridays, go pick up your paper  3 check."  4 <b>Q Okay. Moving down to page 2 is this a text</b>  5 <b>message from Ms. Ramirez -- I'm sorry, from Ms. Cruz to</b>  6 <b>you?</b>  7 A I don't remember this one, but let me -- I  8 don't remember this one let me see, does it show a date?  9 <b>Q I don't see a date on it.</b>  10 A Let me see. Can I read it?  11 <b>Q Yeah, sorry I'm just going to make it bigger</b>  12 <b>for you.</b>  13 A Okay. Thanks. She is just repeating it is  14 it -- that's what it's repeating the \$20 -- no, 20 hours  15 in my payment.  16 And no, it's the same text message, can you  17 bring it up a little, there you go. Yes, that she's --  18 that's her always texting that those are not the only  19 texts I'm pretty sure there's other texts that it was  20 not on -- erased.  21 <b>Q Okay. And what is Ms. Cruz telling you in</b>  22 <b>these text messages?</b>  23 A In that one she says, "You owe me 20 hours for  24 Izuque's and four hours for Melendez."  25 <b>Q Okay.</b></p>
<p style="text-align: right;">Page 111</p> <p>1 And she was a kind of afraid of, you know, her  2 because she kept threatening and she says, "Leave me  3 alone I have nothing to do with that."  4 <b>Q Right.</b>  5 A And that's when I sent her the text I said,  6 "You need to leave my client alone, you know, you need  7 to stop threatening her. If I see that you keep, you  8 know, harassing her, I'm going to call the police." And  9 that's when everything stopped.  10 <b>Q Okay. Now Monday, August 8th was the same day</b>  11 <b>that Ms. Melendez fell down also?</b>  12 A Yeah, it's the same day that she fell.  13 <b>Q And did you confront --</b>  14 A I don't know if that was the same day that she  15 fell, but she said Friday she wasn't there and she had  16 stuff coming and she fell.  17 <b>Q I see. All right. When you confronted Daisy</b>  18 <b>about not being at Ms. Melendez's when she fell, what</b>  19 <b>did Daisy say?</b>  20 A She didn't care.  21 <b>Q Did she say I was there or I didn't?</b>  22 A No, she didn't care, she was -- nothing she  23 didn't say anything, she didn't care.  24 <b>Q Okay. And --</b>  25 A And was basically just arguing, you know, "I</p>	<p style="text-align: right;">Page 113</p> <p>1 A The bottom one is Melendez.  2 <b>Q Right. And she's specifically saying from the</b>  3 <b>23rd to the 29th of May for the Izuque's of 2022,</b>  4 <b>correct. She's over 20 hours, okay. Did you --</b>  5 A May 29th.  6 <b>Q Right. Did you ever investigate those</b>  7 <b>particular hours to see if she was overbilling the time?</b>  8 A Your Honor -- your Counsel, everything is  9 like, I -- like I said, everything is according to  10 authorization, all the hours are input, you know,  11 according to authorization.  12 She knows, and I told her if you put -- if you  13 don't clock in and clock out and you don't send your  14 time sheets, how it's supposed to like, she'll say, "I  15 covered for this person."  16 Okay. "If you cover for that person why  17 didn't you send your time sheet on time, I don't read  18 minds you know, you guys need to communicate with me."  19 Everything like I said, she covered for Monica, she  20 covered for Jenny, the other one that was in there for  21 Valdivieso and for Angela, it was the hours that she was  22 claiming that wasn't authorized that she didn't even  23 work.  24 <b>Q Why did you continue your contractual</b>  25 <b>relationship with Ms. Cruz if you were having all of</b></p>

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1 these problems with her?

2 A That's because I wanted to take her out of the

3 case, but Iziqie preferred to go to the agency that she

4 was working, she says they didn't want to lose her.

5 Q But at any time, even with Ms. Melendez,

6 couldn't --

7 A I took her off Melendez.

8 Q You took her off Melendez?

9 A Yes.

10 Q Okay. And so how does All VIP end its

11 relationships with its caregivers do you just take them

12 off of everybody that they're assigned to or do you just

13 say to them, "Hey, listen we're not going to give you

14 any more work at all anymore."

15 A Okay. It depends, you know, how they've

16 ended, you know, with All VIP care like, for Daisy, she

17 was doing fraud.

18 So, right there, we're not going to hire her

19 she's -- in our system, she's inactive and it gives a

20 reason why. Let's say, if a caregiver says, you know, I

21 don't want to work with you guys anymore, you know, I --

22 you know, some of them -- a lot of them don't say the

23 reason I -- we know they're independent contractors.

24 They apply another agency and that's fine

25 there's other caregivers that will do the case but with

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1 me -- with Daisy, no, we're not going to hire her any

2 longer, but because of Iziqie I told her, "I'm going to

3 take her out of the case." "No, I really like her and I

4 want to keep her and blah, blah."

5 So, there you go she went with another agency,

6 she took them to another agency.

7 Q Right.

8 A And she's working.

9 Q At the time when you kept having to remind Ms.

10 Cruz to punch in and punch out using her phone on the

11 app, and you got a hint that she was falsifying her time

12 sheets, why not just end the contractual relationship

13 between All VIP and her at that point?

14 A Because remember I told you that in -- I

15 always had to confirm with the client. Okay. And I'll

16 say she cannot put these hours in because they're not

17 authorized.

18 So, we're going to pay her for the hours she

19 worked with, like with the -- with Melendez, she's --

20 she didn't work with Melendez anymore.

21 Q Okay.

22 A But with the Iziqie's it was the family they

23 wanted her so bad they wanted her, "No, we want her, we

24 just want to -- we'll explain it to her. That's how

25 we'll help her with the clocking in the clocking out."

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1 They were willing to do anything to keep her.

2 Q Well, can't you always end your con -- your

3 relationship with the client also, couldn't you end your

4 relationship with the Iziqie's?

5 A Yeah, we could have, but she wanted us because

6 there was other aides there, so, you know, working there

7 and the other aides were happy, you know, working there

8 so, and she was happy with the other caregivers.

9 Q Right.

10 A But it was something with her, you know,

11 because she was acting really -- she always really, you

12 know, lovey-dovey with them and you know, try -- did

13 other things like trying to be, and the other aides

14 there told me, she's fake, you know, but I didn't, you

15 know, we don't go by what the other caregivers say, but.

16 Q Understood.

17 A The family member really liked her.

18 Q Generally speaking I know that you said the

19 caregivers had to tell you if they were not going to be

20 available to work certain hours that were on their

21 schedule, correct?

22 A Yes, they had to let us know.

23 Q And that was so that you can find a substitute

24 for them to fill in those hours.

25 A That's correct.

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1 Q Another All VIP caregiver.

2 A That's correct.

3 Q Could the caregivers find their own

4 substitutes, like if Ms. Cruz wasn't going to work some

5 hours on her schedule, she could she just find anybody

6 else to fill in those hours for her?

7 A No.

8 Q No, what if it was All VI -- another, All VIP

9 caregiver could she arrange that on her own and just

10 have that person fill in?

11 A No, not on her own, no.

12 Q Okay. She always had to tell you, correct?

13 A That's correct, because we need to put it in

14 the system.

15 Q Right.

16 A Something happens, we know who's there.

17 Q All right. Okay. And I want to -- have you

18 ever seen, I'm going to show you now, what I'm marking

19 as Exhibit D.

20 (Thereupon, Plaintiff's Exhibit D was entered

21 into the record.)

22 BY MR. CUMMINGS:

23 Q Have you ever seen this Google post from Cesar

24 Iziqie?

25 A Yes, and that's not him that's the daughter

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1 putting all that because Mr. Cesar doesn't speak English  
 2 and Mr. Cesar is -- he has Alzheimer's.  
 3 **Q Okay. Did you see this Google post when it**  
 4 **actually went up on -- I guess, you know, Google?**  
 5 A Not -- I don't know when if I saw it, like  
 6 right away, I don't know exactly because I'm not in --  
 7 you know, looking at the reviews, but -- you know, I did  
 8 see it.  
 9 **Q How did you find out that this review existed?**  
 10 A How did I find out because Liz, the owner  
 11 replied.  
 12 **Q But how did that let you know that it was**  
 13 **there when Liz replied, did you get like a message or**  
 14 **something?**  
 15 A Yeah, Liz told me that they put a bad review.  
 16 **Q Okay. Got it, now here the -- let's say it is**  
 17 **the daughter, let's say it's either Susana or Anna Marie**  
 18 **is saying that the HHAs were always complaining they**  
 19 **were not being paid by the agency that seems to be more**  
 20 **than one, like more than just Ms. Cruz.**  
 21 **Were there any other home health aide that**  
 22 **provided service to the Iziue that complained that they**  
 23 **weren't being paid their hours?**  
 24 A If they were over -- if they overlap, but they  
 25 always got paid, let's say for any reason the system

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1 didn't pick up, you know, two hours, you know, it's not  
 2 us.  
 3 We put in the hours sometimes the system, you  
 4 know, kicks up one hour, two hours and then right away  
 5 we -- you know, they get paid on the following paycheck.  
 6 **Q When you say the system --**  
 7 A It's not that --  
 8 **Q Go ahead.**  
 9 A Yeah, it's not that they're not going to get  
 10 paid and they lost their or else that we wouldn't have  
 11 aides, you know, working with us at all.  
 12 **Q When you say the system, are you talking about**  
 13 **HHA exchange?**  
 14 A Yeah, HHA exchange, when we bill it's -- I'm  
 15 not going to -- it's happened, but right away it's  
 16 corrected.  
 17 **Q And when you say it's happened, you mean that**  
 18 **sometimes the system inputs the incorrect hours?**  
 19 A No, like it probably didn't pick up let's say  
 20 if I have 63 hours that's supposed, I put in 63 hours  
 21 and it says 63 hours, but the system might pick up, say  
 22 62 and then that hour.  
 23 So, we have to go back into, you know, back  
 24 into the system to see what happened and then if it's  
 25 one hour then we'll put it, you know, on their following

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1 paycheck.  
 2 **Q When you say the system --**  
 3 A But it barely happened.  
 4 **Q Okay. When you say the system picks up, like**  
 5 **it's -- I'm, what I'm hearing is like, okay. You as**  
 6 **Diana Ramirez, you input that Ms. Cruz worked 63 hours**  
 7 **but you're saying the system itself only registered 62?**  
 8 A It could happen, it -- not I'm saying that it  
 9 happens all the time, but it happened before.  
 10 **Q And that's not due to human error on your**  
 11 **part?**  
 12 A No.  
 13 **Q Okay.**  
 14 A It has nothing to do on my side, I've put in  
 15 the hours that's why we need time sheets.  
 16 **Q Okay. And does HHA exchange acknowledge that**  
 17 **they have problems with their system registering hours**  
 18 **and Court?**  
 19 A Yeah, we report it, we automatically we call  
 20 support, but it's like I said rarely happens.  
 21 **Q Okay. And did you ever speak to either Susana**  
 22 **or Anna Marie after this Google post was written?**  
 23 A No, after we -- you know, she said that -- you  
 24 know, she's no longer going to have services with us,  
 25 she did call me after we ended to tell me that why

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1 didn't I send, you know, Daisy you know, to work. And I  
 2 said "Well, what do you -- I don't understand" I said,  
 3 "We're no longer, you know, you're no longer with All  
 4 VIP care."  
 5 And then she says, "Yeah, but I don't have  
 6 anybody Monday and Tuesday." and I'm like, "Well, you  
 7 need to call your case manager and let them know to  
 8 change the authorization for the date that you started  
 9 with the other agency. I can't help you right now."  
 10 I told her and that was the end of her. Yeah,  
 11 she called me because I guess the authorization that was  
 12 sent out for the new agency didn't start right away. It  
 13 was like -- it showed like it was still with us, but in  
 14 reality it wasn't with us.  
 15 **Q Okay. All right. Let me show you Exhibit E.**  
 16 (Thereupon, Plaintiff's Exhibit E was entered  
 17 into the record.)  
 18 BY MR. CUMMINGS:  
 19 **Q And -- okay. Do you recognize this document**  
 20 **this is a two page --**  
 21 A Yeah, I wrote it.  
 22 **Q -- document at the top it says statement for**  
 23 **Cruz about Valdivieso, and then on the bottom of page 2,**  
 24 **it has your signature, you wrote this document**  
 25 **statement?**

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1 A Um-hum.  
 2 Q Okay. And you just had to provide a yes or  
 3 no, so let me ask the question again.  
 4 A I'm sorry, yes.  
 5 Q Okay. You wrote this?  
 6 A Yes, that's me writing.  
 7 Q Okay. On August 8th, 2022?  
 8 A That is correct.  
 9 Q Okay. Why did you write this statement?  
 10 A Because I have to write a statement of  
 11 everything that happens I have to keep a record, see I  
 12 have a record right here of just Stacy. If something,  
 13 if an incident report happens, I have to have it because  
 14 of Medicaid they need to know what happened on that day,  
 15 at that time.  
 16 So, if you see here, I have a file just for  
 17 her every aide that has an incident like this needs --  
 18 we need to fill out a statement and it has to be put  
 19 into the client's profile and it's kept with us if  
 20 Medicaid comes, we have it right here.  
 21 Q Understood. And it just so happens that  
 22 August 8th, 2022 I think is around the same time that  
 23 Ms. Melendez complained about falling.  
 24 A Yes.  
 25 Q Is this statement that you're writing in

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1 response to Ms. Melendez call about falling?  
 2 A Yeah, she's -- that's when I found out that  
 3 Daisy -- I'm sorry, Cruz didn't show up when she called  
 4 me on that day.  
 5 Q Okay.  
 6 A And she told me what was happening, so I had  
 7 her to write it down.  
 8 Q Okay. Got it. And the very beginning says on  
 9 July 22nd, 2022 at 08:43 a.m. client's daughter texted  
 10 me saying that they were concerned the HHAs were not  
 11 getting paid, whose daughters are you talking about  
 12 here?  
 13 A Izique's.  
 14 Q Izique's. Okay. So, there was overlap  
 15 between the time that Ms. Cruz worked for the Izique's  
 16 and the Melendez --  
 17 A No.  
 18 Q -- Ms. Melendez?  
 19 A No, remember I told you that she was working  
 20 the private hours that I wasn't aware of that's what she  
 21 was claiming, that she was not getting paid. And that  
 22 Izique was telling me, you know, I have a concern, that  
 23 HHAs are not getting paid and there you go it was, and I  
 24 explained to her.  
 25 Q What I'm trying to figure out is if you were

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1 getting a complaint from the Izique's on July 22nd that  
 2 means that Ms. Cruz was working with the Izique's at  
 3 that time, right?  
 4 A Yeah, she was still -- yeah, I think that was  
 5 like almost the ending that week because I think that  
 6 same week.  
 7 Q She was ending with who?  
 8 A With All VIP care, she was going to another  
 9 agency.  
 10 Q Okay. But I thought on August -- in August  
 11 she was -- Ms. Cruz was still working with Ms. Melendez  
 12 August 20th, 2022?  
 13 A No, she -- with Melendez, no, she didn't --  
 14 she was not showing up with Melendez.  
 15 Q But she was being assigned to Melendez.  
 16 A Yeah, she had Melendez and Izique's. I don't  
 17 remember what date that Izique, but she ended first  
 18 with, Melendez and she was still working with Izique.  
 19 Q All right. And then was there another patient  
 20 named Gabriel Gonzalez that she worked with?  
 21 A Yes, she did. Yes, that was the first one  
 22 yeah, I totally forgot about him.  
 23 Q Okay. So --  
 24 A Yeah, But that was --  
 25 Q That was the first, that was before?

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1 A Soto.  
 2 Q Alicia Soto?  
 3 A Yes, I totally forgot about him, yes.  
 4 Q Were there any issues with Ms. Cruz's hours or  
 5 any complaints that you had about her service with  
 6 Mr. Gonzalez?  
 7 A No, because that was the only client she had.  
 8 Q At the time.  
 9 A It was just -- yeah, at that time.  
 10 Q At that time. Okay. So, was there any -- so  
 11 there was never any overlap between Mr. Gonzalez and  
 12 Ms. Soto?  
 13 A No, because she only had that client and that  
 14 client had certain hours.  
 15 Q And there was never any overlap between Soto  
 16 and Melendez?  
 17 A Soto and Melendez, she wasn't working with  
 18 Soto and Melendez at the same time.  
 19 Q Right. That's what I'm trying to figure out,  
 20 okay.  
 21 A Okay. No.  
 22 Q Okay.  
 23 A She only had the neighbor at that time.  
 24 Q Okay. Got it, and so -- but she was working  
 25 with Melendez and the Izique's at the same time?

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1 A No, after Gabriel that's when she started with  
 2 Melendez and then with the Izique's.  
 3 Q Okay. I thought after Gabriel was Soto.  
 4 A Yes, Soto, got -- Gabriel, Soto then Izique  
 5 with Melendez at the same time.  
 6 Q Okay.  
 7 A Melendez and Izique was at the same time  
 8 because she was not working the full hours with the  
 9 Izique.  
 10 She's just working part-time hours with the  
 11 Izique and 38 hours with -- 42 hours with Melendez.  
 12 Q Okay. We're on the same page now. All right.  
 13 And then I'm just going to show you this one last  
 14 statement, which I'm marking as Exhibit F.  
 15 (Thereupon, Plaintiff's Exhibit F was entered  
 16 into the record.)  
 17 BY MR. CUMMINGS:  
 18 Q Do you recognize -- wait a minute, I didn't  
 19 show it yet, okay. It's not right, hold on, okay. Can  
 20 you see the document I'm showing you on my screen now?  
 21 A Yes.  
 22 Q All right. I'm making this Exhibit F for the  
 23 deposition record, which is the -- it says 11/15/2022 at  
 24 the top and it has your signature at the bottom. Is  
 25 this your signature?

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1 A Yes, it is.  
 2 Q Okay. Do you remember writing this statement?  
 3 A Yes.  
 4 Q Okay. Why did you have to write this  
 5 statement?  
 6 A Because I -- they ac -- the Attorney asked me  
 7 to write the statement, everything that happened, but in  
 8 a formal way, it's the same way. It's the same thing  
 9 that I wrote in with the pen, but I had -- I typed it up  
 10 on that day.  
 11 Q Okay.  
 12 A And because I wanted to look more, you know.  
 13 Q Professional.  
 14 A Yeah.  
 15 Q I got it. No, I understand and this statement  
 16 that you're writing here was not necessarily in response  
 17 to a particular incident happening you were just  
 18 rewriting the previous statement and adding more  
 19 information?  
 20 A Yeah, writing everything how ev -- what  
 21 happened, this whole situation.  
 22 Q All right. Okay. I don't think there's  
 23 anything there that we haven't discussed. All right.  
 24 And just for the record, this is Bates stamp document,  
 25 VIP docs 153.

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1 Okay. Ms. Ramirez, is there anything else  
 2 that you want to add about Ms. Cruz's time with All VIP  
 3 that we have not discussed?  
 4 A No, I think that I can remember everything,  
 5 everything said.  
 6 Q Is there anything that I didn't ask you that  
 7 you thought I would?  
 8 MR. GOLDBERG: Object to form.  
 9 A No.  
 10 BY MR. CUMMINGS:  
 11 Q And I think you've previously stated that you  
 12 don't directly deal with the billing to Medicare and  
 13 Medicaid. Is that right?  
 14 A That's correct.  
 15 Q Do you know anything about All VIP's provider  
 16 number?  
 17 A When you say provider number, you mean the  
 18 NPI, the tax ID.  
 19 Q The NPI?  
 20 A Yeah, I have it.  
 21 Q Okay. Well, I don't need it I'm just saying,  
 22 so All VIP --  
 23 A Yeah.  
 24 Q All VIP has an NPI, correct?  
 25 A Yes, each office has NPI.

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1 Q Each office meaning -- each All VIP office --  
 2 A Each county.  
 3 Q In each county has a different NPI number?  
 4 A Yes.  
 5 Q Got it. Okay. And does that NPI number have  
 6 to be included on billings to Medicare?  
 7 A I can't answer that because I don't know.  
 8 Q All right.  
 9 A That's not my department.  
 10 Q Understood. And do the caregivers themselves  
 11 have their own NPI number?  
 12 A No.  
 13 Q Okay. Do the caregivers have their own when  
 14 they get certified do they have a number that the state  
 15 issued?  
 16 A Yes, not the state, but, you know, when we  
 17 enter them in the system, they have a code it says  
 18 caregiver code.  
 19 Q Caregiver code. Okay. All right. And you  
 20 don't understand how it does -- do you know if that code  
 21 that the caregivers have is somehow submitted to the  
 22 billing departments for Medicare or Medicaid?  
 23 A I have no idea if that code is in there. I  
 24 have no idea because I know in my -- in the private one,  
 25 it doesn't give out code.

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1 It just gives out the name of the caregiver  
 2 because they don't know what the code is it's just --  
 3 that's just for us in the system when we need to search  
 4 them up.  
 5 **Q Got it. And the app that the caregivers were**  
 6 **supposed to be using to clock in and clock out, that was**  
 7 **a HHA exchange app on their phone?**  
 8 A That's correct.  
 9 **Q All right. Did they have to pay for that app?**  
 10 A No, Counsel they didn't have to pay for it.  
 11 **Q Did the providers have to pay for anything to**  
 12 **do their work besides their scrub -- well, let me put it**  
 13 **like the other way around. Did All VIP provide any type**  
 14 **of equipment that the caregivers needed to provide their**  
 15 **services?**  
 16 A When they needed gloves or, you know, the mask  
 17 out of courtesy we had, you know, extra, especially  
 18 because of the pandemic, we always had you know, gloves,  
 19 we give them a box, you know or a box of you know,  
 20 masks. But their independent contractor, but they need  
 21 to have their own supplies.  
 22 **Q All right. And, so there was like PPE,**  
 23 **personal protective equipment that was available in the**  
 24 **office for them to come pick up?**  
 25 A Yes.

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1 MR. CUMMINGS: All right. I have no further  
 2 questions, Mr. Goldberg.  
 3 MR. GOLDBERG: I just have a couple, sir.  
 4 Thank you.  
 5 MR. CUMMINGS: All right.  
 6 CROSS EXAMINATION  
 7 BY MR. GOLDBERG:  
 8 **Q Diana?**  
 9 A Yes.  
 10 **Q To the best of your knowledge, sorry, can you**  
 11 **hear me?**  
 12 A Yes, I can hear you clearly.  
 13 **Q Okay. Thank you. Diana, to the best of your**  
 14 **knowledge was Cruz paid for every hour that she worked**  
 15 **for clients in accordance with VIP's relationship with**  
 16 **that client?**  
 17 A Yes, Counsel.  
 18 **Q And how many time -- if you know, let me**  
 19 **rephrase this. Did you frequently have discussions with**  
 20 **Ms. Cruz about the HHA exchange program on her phone?**  
 21 A Yes, and that's why I told her to come in so  
 22 we can teach her how to do it.  
 23 **Q And did she comply with your request?**  
 24 A No.  
 25 **Q Now, the time sheets that we have spoken about**

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1 **during the deposition, are the time sheets a backup to**  
 2 **the HHA exchange program?**  
 3 A That is correct, Counsel.  
 4 **Q So, it's the time she's already checks and**  
 5 **balance to the accuracy of the HHA exchange, correct?**  
 6 A That's correct.  
 7 **Q How many times -- if you know, did Ms. Cruz,**  
 8 **complaint to you that she was not paid for the hours**  
 9 **that she worked?**  
 10 A When she started putting the private hours?  
 11 **Q And did you explain to her the difference in**  
 12 **private hours and the hours that were authorized by**  
 13 **VIP?**  
 14 A Counsel, the thing is that I didn't know she  
 15 was doing private hours, so I was confused of all the --  
 16 you know, the hours that she was claiming.  
 17 I said, "But why are you getting all these  
 18 hours when you have only this amount of hours  
 19 authorized." And that was her confusion.  
 20 **Q Now, just so I am clear, when did you learn**  
 21 **that Ms. Cruz was including her private hours in her**  
 22 **time sheets?**  
 23 A If I recall, it was almost close to when, the  
 24 Izique left because the daughter told me because the  
 25 daughter kept, she kept nagging the daughter, they owe

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1 me you know, because she was -- you know, all she did  
 2 was add hours altogether.  
 3 That's all she did and then she -- like,  
 4 she'll add how much that she needs to get paid, so the  
 5 only thing she will say, "You owe me this amount because  
 6 I worked this many hours."  
 7 So, when the daughter called me, she says,  
 8 "Well, Daisy's working these hours." And I said, "Hold  
 9 on, well that's not -- she's saying that we owe her  
 10 three hours."  
 11 And then she goes -- and she's putting in our  
 12 extra hours in there and that's when I found out because  
 13 the daughter told me, daughter told --  
 14 **Q Which daughter -- I apologize, miss --**  
 15 A If I'm not mistaken, I think it was Susana.  
 16 **Q Can you spell that name for me please?**  
 17 A It's like Susana, which is add an A at the --  
 18 instead of an E and A, S-U-S-A-N-A.  
 19 **Q Got it. Now, you testified earlier that if**  
 20 **the HHA such as Ms. Cruz was to be working private hours**  
 21 **that puts her in breach of her independent contractor**  
 22 **agreement with VIP?**  
 23 A Yes, I told Daisy and the daughter, but I  
 24 think they already kind of knew because that's when they  
 25 decided to leave.

<p style="text-align: right;">Page 134</p> <p>1 Q Did you terminate Ms. Cruz -- I'm sorry, yes.</p> <p>2 Did you terminate Ms. Cruz from VIP?</p> <p>3 A Yes, she no longer is active with us.</p> <p>4 Q And how was the -- who made that decision?</p> <p>5 A The owner, Liz and myself.</p> <p>6 Q And that decision was based upon Ms. Cruz</p> <p>7 providing private hours to VIP clients, correct?</p> <p>8 A Exactly. And as well as telling the client</p> <p>9 that to switch over to the other agency that she was</p> <p>10 working with.</p> <p>11 MR. GOLDBERG: No further questions</p> <p>12 Mr. Cummings, thank you.</p> <p>13 MR. CUMMINGS: Okay. I'm -- I don't -- just</p> <p>14 one other question, Ms. Ramirez.</p> <p>15 RE-DIRECT EXAMINATION</p> <p>16 BY MR. CUMMINGS:</p> <p>17 Q Can you bill families directly without going</p> <p>18 through the, let's say, Medicare or Medicaid?</p> <p>19 A Yes, Counsel, if they do a contract with us,</p> <p>20 yes.</p> <p>21 Q Okay. Then -- sorry, go ahead.</p> <p>22 A We bill and we send them an invoice.</p> <p>23 Q Okay. And then that's not through any type of</p> <p>24 insurer, it's just a contract directly between the</p> <p>25 patient and All VIP?</p>	<p style="text-align: right;">Page 136</p> <p>1 (Reading and signing of the deposition by the</p> <p>2 witness has been reserved.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 135</p> <p>1 A That's correct, because we do have private</p> <p>2 clients.</p> <p>3 Q Right. And then that situation, caregivers</p> <p>4 are sent out and the schedule is made just the same way?</p> <p>5 A Yes, the only thing that this is just, you</p> <p>6 know, it's private and that's the only difference just</p> <p>7 the --</p> <p>8 Q Okay. Under those circumstances, does the</p> <p>9 caregiver negotiate a different rate of pay for hourly</p> <p>10 pay for those private clients?</p> <p>11 A No, they don't really say this is how much it</p> <p>12 pays and they agree and they then go.</p> <p>13 Q Okay. But because there's no cap by Medicaid,</p> <p>14 let's say, for example, \$20 is All VIP charging more</p> <p>15 money to the private clients than they do in other</p> <p>16 situations?</p> <p>17 A No.</p> <p>18 Q Okay.</p> <p>19 A Because I have private because I have</p> <p>20 contracts here that I can show you that it says \$20 an</p> <p>21 hour.</p> <p>22 Q All right.</p> <p>23 MR. CUMMINGS: Okay. No, further questions.</p> <p>24 MR. GOLDBERG: We will read.</p> <p>25 (Deposition concluded at 12:56 p.m.)</p>	<p style="text-align: right;">Page 137</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF FLORIDA</p> <p>3 COUNTY OF PALM BEACH</p> <p>4</p> <p>5 I, Danielle J. Braelow, Court Reporter and Notary</p> <p>6 Public for the State of Florida, do hereby certify that</p> <p>7 I was authorized to and did digitally report and</p> <p>8 transcribe the foregoing proceedings, and that the</p> <p>9 transcript is a true and complete record of my notes.</p> <p>10 I further certify that I am not a relative,</p> <p>11 employee, attorney or counsel of any of the parties, nor</p> <p>12 am I a relative or employee of any of the parties'</p> <p>13 attorneys or counsel connected with the action, nor am I</p> <p>14 financially interested in the action.</p> <p>15</p> <p>16 Witness my hand this 21st day of June, 2023.</p> <p>17</p> <p>18 <i>Danielle Braelow</i></p> <p>19</p> <p>20</p> <p>21 DANIELLE J. BRAELOW, COURT REPORTER</p> <p>22 NOTARY PUBLIC, STATE OF FLORIDA</p> <p>23</p> <p>24</p> <p>25</p>

Page 138	Page 140
1 CERTIFICATE OF OATH	1 Errata Sheet
2 STATE OF FLORIDA	2
3 COUNTY OF PALM BEACH	3 NAME OF CASE: CRUZ VALDIVIESO FIGUERA vs ALL VIP CARE INC. AND LIZ VELAZQUEZ MCKINNON
4	4 DATE OF DEPOSITION: 06/07/2023
5 I, Danielle J. Braelow, the undersigned authority,	5 NAME OF WITNESS: Diana Ramirez
6 certify that Diana Ramirez appeared before me remotely	6 Reason Codes:
7 pursuant to Florida Supreme Court Order AOSC20-23 and	7 1. To clarify the record.
8 was duly sworn on the 7th day of June, 2023.	8 2. To conform to the facts.
9	9 3. To correct transcription errors.
10 Witness my hand this 21st day of June, 2023.	10 Page ____ Line ____ Reason ____
11	11 From ____ to ____
12 <i>Danielle Braelow</i>	12 Page ____ Line ____ Reason ____
13	13 From ____ to ____
14 DANIELLE J. BRAELOW, COURT REPORTER	14 Page ____ Line ____ Reason ____
15 NOTARY PUBLIC, STATE OF FLORIDA	15 From ____ to ____
16 Commission No.: GG 926016	16 Page ____ Line ____ Reason ____
17 Commission Exp: 10/24/2023	17 From ____ to ____
18	18 Page ____ Line ____ Reason ____
19	19 From ____ to ____
20	20 Page ____ Line ____ Reason ____
21	21 From ____ to ____
22	22 Page ____ Line ____ Reason ____
23	23 From ____ to ____
24	24
25	25

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1 DATE: June 20, 2023
2 TO: Diana Ramirez
3 C/O Randy Mark Goldberg, Esquire
4 Randy M. Goldberg & Associates, PLLC
5 151 NW 1st Avenue
6 Delray Beach, FL 33444-2611
7 IN RE: CRUZ VALDIVIESO FIGUERA vs. ALL VIP CARE INC.
8 AND LIZ VELAZQUEZ MCKINNON
9 CASE NO: 0:22-CV-61553-DIMITROULEAS/HUNT
10 Dear Ms. Ramirez,
11
12 Please take notice that on June 7, 2023, you gave
13 your deposition in the above-referenced matter. At that
14 time, you did not waive signature. It is now necessary
15 that you sign your deposition. You may do so by
16 contacting your own attorney or the attorney who took
17 your deposition and make an appointment to do so at
18 their office. You may also contact our office at the
19 below number, Monday - Friday, 9:00 AM - 5:00 PM, for
20 further information and assistance.
21 If you do not read and sign your deposition within
22 thirty (30) days, the original, which has already been
23 forwarded to the ordering attorney, may be filed with
24 the Clerk of the Court.
25 If you wish to waive your signature, sign your name
in the blank at the bottom of this letter and promptly
return it to us.
Very truly yours,
Danielle J. Braelow, Court Reporter
Universal Court Reporting
(954) 712-2600
I do hereby waive my signature.
Diana Ramirez
Cc: via transcript: Randy Mark Goldberg, Esquire

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:22-CV-61553-DIMITROULEAS/HUNT

CRUZ VALDIVIESO FIGUERA,

Plaintiff,

vs.

ALL VIP CARE INC. AND  
LIZ VELAZQUEZ MCKINNON,

Defendant.

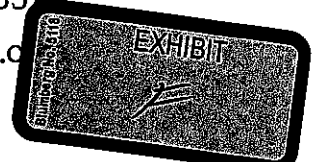
DEPOSITION OF LIZ VANESSA MCKINNON

TAKEN ON BEHALF OF THE PLAINTIFF

MAY 16, 2023  
11:03 A.M TO 2:14 P.M

ALL PARTIES APPEARED REMOTELY  
PURSUANT TO  
FLORIDA SUPREME COURT ORDER AOSC20-23

REPORTED BY:  
SULEYDIS VIDES, COURT REPORTER  
NOTARY PUBLIC, STATE OF FLORIDA



CRUZ VALDIVIESO FIGUERA vs ALL VIP CARE INC. AND LIZ VELAZQUEZ MCKINNON  
Mckinnon, Liz on 05/16/2023 Pages 2..5

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1	APPEARANCES OF COUNSEL	1	INDEX OF EXHIBITS
2	ON BEHALF OF THE PLAINTIFF:	2	EXHIBIT DESCRIPTION PAGE
3	TOUSSAINT CUMMINGS, ESQUIRE	3	PLAINTIFF'S:
4	FAIRLAW FIRM	4	EXHIBIT A NOTICE OF TAKING DEPOSITION 9
5	135 SAN LORENZO AVENUE, SUITE 770	5	EXHIBIT B PATIENT TIME SHEETS 40
6	CORAL GABLES, FLORIDA 33146	6	EXHIBIT C PATIENT CESAR GOOGLE POST REVIEW 61
7	305-230-4884	7	EXHIBIT D INDEPENDENT CONTRACTOR AGREEMENT
8	TOUSSAINT@FAIRLAWATTORNEY.COM	8	AND SIGN UP DOCUMENTS 67
9	(REMOTELY VIA ZOOM)	9	EXHIBIT E ALL VIP PATIENT CALENDAR 81
10	ON BEHALF OF THE DEFENDANT:	10	EXHIBIT F WEEKLY PAY STUBS 98
11	RANDY MARK GOLDBERG, ESQUIRE	11	EXHIBIT G 22-0808 STATEMENT OF DIANA RAMIREZ 102
12	RANDY M. GOLDBERG & ASSOCIATES, PLLC	12	
13	151 NORTHWEST 1ST AVENUE	13	
14	DELRAY BEACH, FLORIDA 33444	14	
15	754-224-0867	15	
16	RMGESQUIRB@GMAIL.COM	16	
17	(REMOTELY VIA ZOOM)	17	
18		18	
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1	INDEX OF EXAMINATION	1	VIDEOTAPED DEPOSITION OF LIZ VANESSA MCKINNON
2	WITNESS: LIZ VANESSA MCKINNON	2	MAY 16, 2023
3	DIRECT EXAMINATION	3	Thereupon:
4	BY TOUSSAINT CUMMINGS, ESQUIRE	4	LIZ VANESSA MCKINNON
5		5	was called as a witness, and after having been first
6		6	duly sworn, testified as follows:
7		7	THE COURT REPORTER: We are now on the record.
8		8	Today's date May 16th, 2023, and the time is
9		9	approximately 11:00 a.m.
10		10	We are here for the videotaped deposition
11		11	of Cruz Valdivieso Figuera versus All VIP Care,
12		12	Inc.
13		13	and Liz Velazquez McKinnon. Case Number
14		14	022-CV-61553. United States District Court
15		15	Southern District of Florida.
16		16	The Court Reporter is Suleydis Vides with
17		17	Universal Court Reporting.
18		18	Would all Counsels please introduce yourself
19		19	for the record? I'm sorry, counsel you're muted.
20		20	MR. CUMMINGS: I was muted. Toussaint
21		21	Cummings on behalf of Plaintiff, Cruz Valdivieso
22		22	Figuera.
23		23	MR. GOLDBERG: Randy Goldberg on behalf of
24		24	Defendants in this action.
25		25	THE COURT REPORTER: Thank you. Counselors,

<p style="text-align: right;">Page 6</p> <p>1 you might proceed.</p> <p>2 DIRECT EXAMINATION</p> <p>3 BY MR. CUMMINGS:</p> <p>4 Q Okay. All right. Good morning, Ms. McKinnon.</p> <p>5 A Good morning.</p> <p>6 Q All right. My name is Toussaint Cummings, I'm</p> <p>7 the Attorney representing Cruz Valdivieso and this is a</p> <p>8 bit of a different type of a deposition. Have you ever</p> <p>9 taken a deposition before?</p> <p>10 A Don't think so.</p> <p>11 Q Okay. And so you've never taken a deposition</p> <p>12 before at all as far as you know?</p> <p>13 A As far as I recall, no.</p> <p>14 Q All right. So, normally a deposition I would</p> <p>15 be asking you questions in your own individual capacity.</p> <p>16 Today you're here as Representative of All</p> <p>17 VIP. I'll just, you know, abbreviate the name All VIP,</p> <p>18 the company.</p> <p>19 A Okay.</p> <p>20 Q Okay. All right. So, do you understand that</p> <p>21 you are here representing -- you always have to be</p> <p>22 respectful to the Court Reporter and that requires that</p> <p>23 we only speak one at a time.</p> <p>24 The reason being is because when I ask a</p> <p>25 question, it gets printed up in a deposition transcript,</p>	<p style="text-align: right;">Page 8</p> <p>1 will be no answer to write down. So, please always</p> <p>2 provide a yes, a verbal yes or no or whatever the answer</p> <p>3 calls for it. All right.</p> <p>4 A Okay.</p> <p>5 Q All right. If there's a situation where that</p> <p>6 happens, again I'll just repeat the question remind you</p> <p>7 to please provide a verbal response.</p> <p>8 A Okay.</p> <p>9 Q And the third instance is when people are</p> <p>10 answering questions and they say uh-huh or uh-uh because</p> <p>11 that doesn't necessarily mean anything when it's written</p> <p>12 down. So, if you say uh-huh or uh-uh, then I'll just</p> <p>13 remind you repeat the question and then continue moving</p> <p>14 on. Okay?</p> <p>15 A Got it.</p> <p>16 Q All right. So, did you receive the deposition</p> <p>17 notice for this deposition?</p> <p>18 A Think I received several.</p> <p>19 Q Okay.</p> <p>20 A So, yes. The answer is yes.</p> <p>21 Q All right. No problem. Let me just show you</p> <p>22 exactly what I'm talking about here. All right. I am</p> <p>23 going to make this Exhibit 1 for the deposition record.</p> <p>24 Okay. And so, I think I said Exhibit, but</p> <p>25 actually it should be Exhibit A.</p>
<p style="text-align: right;">Page 7</p> <p>1 like a little booklet.</p> <p>2 So there'll be a question line, a question and</p> <p>3 then there will be an answer line for the answer that</p> <p>4 you provide on behalf of the company. Okay?</p> <p>5 A Okay.</p> <p>6 Q Got it. And so sometimes I may be asking you</p> <p>7 a question and you may anticipate where the question was</p> <p>8 going and then if you jump ahead, what happens is -- the</p> <p>9 answer that you're providing and then we can't read it</p> <p>10 smoothly in the transcript.</p> <p>11 So if that happens, then I'll just ask you --</p> <p>12 then I'll just remind you and then I'll repeat the</p> <p>13 question so that we have a clear question and answer.</p> <p>14 All right.</p> <p>15 A Okay.</p> <p>16 Q Okay. Now you're not the only person that</p> <p>17 does it, I do it sometimes also. Sometimes I may</p> <p>18 interrupt your answer and then when that happens, I'll</p> <p>19 repeat the question for the same reason.</p> <p>20 A Okay.</p> <p>21 Q All right. Second thing is, we always have to</p> <p>22 provide a verbal response to any question that I ask.</p> <p>23 So for example, if you shake your head, like</p> <p>24 yes or no or, you know, then the transcript or the Court</p> <p>25 Reporter cannot pick up none verbal responses, so there</p>	<p style="text-align: right;">Page 9</p> <p>1 (Thereupon, Plaintiff's Exhibit A was entered</p> <p>2 into the record.)</p> <p>3 BY MR. CUMMINGS:</p> <p>4 Q So, you see the document I'm sharing my screen</p> <p>5 right now Ms. McKinnon?</p> <p>6 A Yes.</p> <p>7 Q All right. And have you seen this document</p> <p>8 before?</p> <p>9 A Yes.</p> <p>10 Q All right. The reason I'm showing this to you</p> <p>11 is because not only does it have the date of today's</p> <p>12 deposition, but there's a third page that shows what's</p> <p>13 called the areas of inquiry which are questions or</p> <p>14 topics that I'll be asking you about today. Have you</p> <p>15 seen this page before?</p> <p>16 A I saw it.</p> <p>17 Q Okay. All right. And so you understand that</p> <p>18 the questions that I ask you today are generally going</p> <p>19 to be related to the areas that are here, correct?</p> <p>20 A Yes.</p> <p>21 Q All right. And are you prepared to answer</p> <p>22 questions related to these topics?</p> <p>23 A Somewhat, I believe.</p> <p>24 Q Okay. All right. Did you speak to anybody in</p> <p>25 preparation for this deposition?</p>

<p>Page 10</p> <p>1 A Just -- I believe, just, you know, just</p> <p>2 Randy, but, you know, it was basically that we had to</p> <p>3 prepare --</p> <p>4 Q Hold on. Without telling me what the</p> <p>5 conversation was? --</p> <p>6 A No, that was it. Just to prepare for this day.</p> <p>7 Q Yeah, exactly right. Yeah. So, you don't</p> <p>8 have to tell me anything you ever say with your Attorney</p> <p>9 because that violates the attorney-client privilege, but</p> <p>10 in preparation for this deposition, you spoke with your</p> <p>11 Attorney, Randy Goldberg?</p> <p>12 A Yes.</p> <p>13 Q And did you speak to anybody else that was not</p> <p>14 an attorney, like, any employees or anybody else?</p> <p>15 A Yes.</p> <p>16 Q Okay. All right. Go ahead.</p> <p>17 A That would be Diana Ramirez because she also</p> <p>18 is going to be deposed and that was it. It was</p> <p>19 basically to discuss that we're going to be deposed and</p> <p>20 that's it.</p> <p>21 Q Okay. No problem. It's my understanding that</p> <p>22 Ms. Ramirez no longer works with All VIP. Is that</p> <p>23 correct?</p> <p>24 A No, she's back.</p> <p>25 Q She's back. Okay. All right, works. But</p>	<p>Page 12</p> <p>1 office. How many offices does All VIP have?</p> <p>2 A Let's see. We have one in West Palm Beach, we</p> <p>3 have an office in Port St. Lucie, we have an office in</p> <p>4 Pahokee, we have an office in Miami and Broward. Some</p> <p>5 five perhaps.</p> <p>6 Q Okay. And when you said that you're the Palm</p> <p>7 Beach administrators, did you mean West Palm Beach?</p> <p>8 A Yes. What happens is that each county has a</p> <p>9 license, so you need to have an administrative for each</p> <p>10 county. So, I'm the administrator for the Palm Beach</p> <p>11 office and license.</p> <p>12 Q How long have you been the administrator for</p> <p>13 the Palm Beach office?</p> <p>14 A Since 2016.</p> <p>15 Q Are you a -- an owner of All VIP?</p> <p>16 A Yes, I am.</p> <p>17 Q Are you the only owner of All VIP?</p> <p>18 A That is correct.</p> <p>19 Q How long have you been the owner of All VIP?</p> <p>20 A Since 2016.</p> <p>21 Q Did All VIP exist before 2016?</p> <p>22 A No.</p> <p>23 Q All right. And these pauses are just me</p> <p>24 taking -- writing down notes. Okay. Just --</p> <p>25 A Okay.</p>
<p>Page 11</p> <p>1 there was a period of time when Ms. Ramirez was not</p> <p>2 working for All VIP?</p> <p>3 A Yes, like several weeks. She had a family</p> <p>4 issue, but she's back.</p> <p>5 Q Okay. And what is Ms. Ramirez's position with</p> <p>6 All VIP?</p> <p>7 A She is the administrator for the Broward</p> <p>8 office.</p> <p>9 Q Besides Ms. Ramirez, did you speak to any</p> <p>10 other All VIP employees in preparation for the</p> <p>11 deposition?</p> <p>12 A No, that was it.</p> <p>13 Q Got it. Okay. Is there any reason why you</p> <p>14 cannot take a deposition today?</p> <p>15 A No, there's no reason why I cannot.</p> <p>16 Q All right. So, let's get started.</p> <p>17 Ms. McKinnon, are you an employee of All VIP?</p> <p>18 A I'm going to say yes because I run the office</p> <p>19 as well. Yes.</p> <p>20 Q What is your position with All VIP?</p> <p>21 A I am the administrator for the Palm Beach</p> <p>22 Office or County or license.</p> <p>23 Q Previously you mentioned that Ms. Ramirez was</p> <p>24 the administrator for the Broward office and now you're</p> <p>25 saying you're the administrator for the Palm Beach</p>	<p>Page 13</p> <p>1 Q Okay. What services does All VIP provide?</p> <p>2 A We provide medical and non-medical services.</p> <p>3 Q What are the medical services that are</p> <p>4 provided?</p> <p>5 A Nursing. Just nursing, skilled nursing.</p> <p>6 Q And the nursing that's provided, do those</p> <p>7 nurses visit clients in their home?</p> <p>8 A Yes.</p> <p>9 Q Do the nurses treat patients outside of their</p> <p>10 homes?</p> <p>11 A Be more specific please?</p> <p>12 Q I'm not really sure how to ask the question</p> <p>13 any differently. What I guess I basically want to know</p> <p>14 is, do the nurses that work for All VIP only provide</p> <p>15 services in home for the clients?</p> <p>16 A No, they do not.</p> <p>17 Q Okay. If the nurses are now working in homes,</p> <p>18 what other types of services do they provide outside of</p> <p>19 homes?</p> <p>20 A They can work for them at the hospital,</p> <p>21 private pay, they can work for them -- they can travel</p> <p>22 with the client. They can also work in an assisted</p> <p>23 living facility with the client.</p> <p>24 Q Okay. And then you mentioned that there's</p> <p>25 non-medical services, what types of non-medical services</p>

<p style="text-align: right;">Page 14</p> <p>1 does All VIP provide?</p> <p>2 A That includes personal care which is bathing,</p> <p>3 dressing. We provide transportation, we provide meal</p> <p>4 preparation, homemaking, household duties, companionship</p> <p>5 and the like.</p> <p>6 Q What types of All VIP employees provide the</p> <p>7 non-medical services?</p> <p>8 A HHAs and CNAs.</p> <p>9 Q HHA stands for Home Health Aide?</p> <p>10 A Correct.</p> <p>11 Q And CNA stands for Certified Nursing</p> <p>12 Assistant?</p> <p>13 A That's right.</p> <p>14 Q Does All VIP employee any other job positions</p> <p>15 except for nurses, home health aides and certified</p> <p>16 nursing assistants?</p> <p>17 A An RNs and LPNs and that's as far as we go.</p> <p>18 Q RN is going to be resident nurse?</p> <p>19 A The RN is going to be registered nurse --</p> <p>20 Q Registered nurse.</p> <p>21 A -- and then the LPN.</p> <p>22 Q And what is LPN stand for?</p> <p>23 A Licensed Practical something. I don't</p> <p>24 remember --</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 16</p> <p>1 A That all depends because, you know, I don't</p> <p>2 know if you want to stay specific to this case or you</p> <p>3 want me to go in general, you have to tell me.</p> <p>4 Q Okay. No problem. Let's speak generally for</p> <p>5 right now.</p> <p>6 A Okay.</p> <p>7 Q Generally speaking, how does All VIP determine</p> <p>8 if a client needs companionship services?</p> <p>9 A One way that we can do it is by the -- either</p> <p>10 the administrator or the nurse goes out to the client's</p> <p>11 home and does a care plan -- to do a care plan or the</p> <p>12 client might just ask for it.</p> <p>13 We have many clients that will call and say I</p> <p>14 need companionship for my parent. You know, I live in a</p> <p>15 different state.</p> <p>16 My mom is home alone all the time, she, you</p> <p>17 know, so they might want companionship. Sometimes even</p> <p>18 playing dominoes or bingo cards in the home, that's</p> <p>19 companionship.</p> <p>20 Q Okay. And how is the order directed to the</p> <p>21 home health aide or the certified nursing assistant that</p> <p>22 they are only to be providing companionship services?</p> <p>23 A Again, that depends. For example, I'm going</p> <p>24 to use Medicaid now, Medicaid Long Term Care Program.</p> <p>25 The Medicaid Long Term Care program, they have their own</p>
<p style="text-align: right;">Page 15</p> <p>1 A -- but it's just, you know, it's a step down</p> <p>2 from being a registered nurse.</p> <p>3 Q Got it. Okay. And a registered nurse would</p> <p>4 be under the umbrella of medical services?</p> <p>5 A Correct because she can provide skilled</p> <p>6 services.</p> <p>7 Q And a license -- let's assume that LPN stands</p> <p>8 for licensed practical nurse. Do they also fall under</p> <p>9 medical services?</p> <p>10 A Oh, yes, they're allowed to.</p> <p>11 Q Okay. All right. Now you mentioned that</p> <p>12 under non-medical services one of the types of services</p> <p>13 companionship, what does companionship mean?</p> <p>14 A Talking to the client and, you know, many</p> <p>15 clients sometimes are lonely or depressed. So, they</p> <p>16 talk.</p> <p>17 They might talk about sports, they might talk</p> <p>18 about history, anything, the country, you know, we have</p> <p>19 lot of clients from Cuba, so they'll talk about a</p> <p>20 country back in the day, their foods, you know, the</p> <p>21 culture. Just keeping them, you know, entertain, you</p> <p>22 know, keeping their mind going.</p> <p>23 Q And as it relates to companionship, who</p> <p>24 determines whether the client needs companionship</p> <p>25 services?</p>	<p style="text-align: right;">Page 17</p> <p>1 system where they do the evaluations.</p> <p>2 After they perform a care plan and they do the</p> <p>3 evaluation, they speak to the client's doctor, they will</p> <p>4 send that to the agency, they will tell us what services</p> <p>5 to provide.</p> <p>6 Once they give us those instructions, then we</p> <p>7 call our caregivers and we ask our caregivers, "Can you</p> <p>8 perform these duties?" They either say yes or they say</p> <p>9 no, that's how it all begins.</p> <p>10 Q And when you mentioned the agency, you are</p> <p>11 referring to All VIP?</p> <p>12 A That is correct. In this case, yes.</p> <p>13 Q Right. How does All VIP obtained its clients?</p> <p>14 A Well, I've been in the industry for a very</p> <p>15 long time. So, I've already established my resources,</p> <p>16 word of word of mouth, marketing, advertisements, case</p> <p>17 managers, you know, hospitals.</p> <p>18 Q Generally speaking, do clients reach out to</p> <p>19 All VIP for their services?</p> <p>20 A Yes, they can.</p> <p>21 Q Does all VIP do any -- I know you mentioned</p> <p>22 marketing, but do you do any, like, direct solicitation</p> <p>23 of clients?</p> <p>24 A No. We basically just print that out, you</p> <p>25 know, through care.com or, you know, that type of --</p>

<p style="text-align: right;">Page 18</p> <p>1 that type of thing, A Place for Mom.</p> <p>2 That's usually how we get our clients or</p> <p>3 unless someone calls us and says to us "listen, you</p> <p>4 know, we know someone who needs services, here's a</p> <p>5 number, please call them".</p> <p>6 That's -- then that's the only way I will</p> <p>7 solicitate a client. If someone will call me and say,</p> <p>8 please call so and so, they need services. Other than</p> <p>9 that, we place our X.</p> <p>10 <b>Q Once a potential client for All VIPs</b></p> <p>11 <b>identified, what process is there to actually have that</b></p> <p>12 <b>person become a client?</b></p> <p>13 A We do a care plan. We do an assessment, we</p> <p>14 discuss the pricing or the fee and then we start to look</p> <p>15 for caregiver that is a good fit for the client.</p> <p>16 <b>Q How do clients pay for All VIP services?</b></p> <p>17 A They either pay by credit card or check or the</p> <p>18 insurance company pays.</p> <p>19 <b>Q Okay. So, in the first example you gave which</b></p> <p>20 <b>is credit card and check, then would that client be</b></p> <p>21 <b>considered a private client for All VIP?</b></p> <p>22 A It will be for the private clients.</p> <p>23 <b>Q Are private clients generally paying more than</b></p> <p>24 <b>clients who pay -- who are having their services paid</b></p> <p>25 <b>through insurance?</b></p>	<p style="text-align: right;">Page 20</p> <p>1 Once the caregiver sends us their timesheet,</p> <p>2 which means we have to reimburse them for their</p> <p>3 services, then we send that over to the insurance</p> <p>4 company.</p> <p>5 So as soon as a caregiver sends me her</p> <p>6 timesheet, that's when we send it over to the insurance</p> <p>7 company for payment.</p> <p>8 <b>Q If there's a potential client for All VIP who</b></p> <p>9 <b>is going to use insurance to pay for services, is there</b></p> <p>10 <b>insurance information collected upfront?</b></p> <p>11 A Oh, yes, from the very beginning.</p> <p>12 <b>Q And what All VIP verifies that the insurance</b></p> <p>13 <b>is valid, how quickly is a caregiver provided to that</b></p> <p>14 <b>person?</b></p> <p>15 A As soon as we can find someone, that can be a</p> <p>16 day, that can be two days, that can be a week. It all</p> <p>17 depends on the needs and also the insurance company will</p> <p>18 tell us too when to start to provide services.</p> <p>19 <b>Q Do insurance companies limit the number of</b></p> <p>20 <b>visits that their clients have with All VIPs caregivers?</b></p> <p>21 A Yes, they do.</p> <p>22 <b>Q Do the insurance companies define the scope of</b></p> <p>23 <b>services that will be -- that All VIP will be providing</b></p> <p>24 <b>to its clients?</b></p> <p>25 A Yes, they send over the care plan.</p>
<p style="text-align: right;">Page 19</p> <p>1 A Yes, I know.</p> <p>2 <b>Q Okay. What would the yes be, does it just</b></p> <p>3 <b>depend on the services that they're receiving?</b></p> <p>4 A It depends who's paying. The VA pays very</p> <p>5 well and most private clients don't pay that much. So,</p> <p>6 the answer to your question is, yes, I know.</p> <p>7 <b>Q So, some of All VIPs clients are veterans?</b></p> <p>8 A That's correct.</p> <p>9 <b>Q And if the client is a veteran, then sometimes</b></p> <p>10 <b>their -- All VIPs fees are being paid by the Veterans</b></p> <p>11 <b>Affairs Association?</b></p> <p>12 A That is correct.</p> <p>13 <b>Q All right. And then some clients who are not</b></p> <p>14 <b>paying through insurance are paying out of their own</b></p> <p>15 <b>pocket as far as you know?</b></p> <p>16 A Yes. If the insurance doesn't pay, then</p> <p>17 they're paying out of their own pocket.</p> <p>18 <b>Q And when we talk about clients whose insurance</b></p> <p>19 <b>is paying for the service, then at what point does the</b></p> <p>20 <b>insurance company become involved in the payment</b></p> <p>21 <b>process?</b></p> <p>22 A Oh, from the very -- once we bill. Once the</p> <p>23 insurance company calls us and sends us the referral, we</p> <p>24 accept the client and we staff the client with a</p> <p>25 caregiver, then we begin to bill.</p>	<p style="text-align: right;">Page 21</p> <p>1 <b>Q Do All VIP caregivers ever modify the</b></p> <p>2 <b>insurance plan without the carrier's consent or</b></p> <p>3 <b>knowledge?</b></p> <p>4 A The caregiver cannot do that.</p> <p>5 <b>Q Do caregivers have the ability to ask the</b></p> <p>6 <b>insurance company to modify the care plan?</b></p> <p>7 A They definitely have the ability, but they do</p> <p>8 not have the right and it's an appropriate for them to</p> <p>9 do that.</p> <p>10 <b>Q Are the caregivers informed that they cannot</b></p> <p>11 <b>modify care plans that are created by insurance</b></p> <p>12 <b>companies?</b></p> <p>13 A Oh, they won't inform, especially when they've</p> <p>14 been working for many years as a caregiver because</p> <p>15 pretty much all the agencies are the same and</p> <p>16 furthermore, they get this big package when they come in</p> <p>17 to apply.</p> <p>18 <b>Q Come in to apply for All VIP?</b></p> <p>19 A That's correct. And usually all the agencies</p> <p>20 in town pretty much had the same rules.</p> <p>21 <b>Q Who at All VIP and let's just stick with the</b></p> <p>22 <b>Palm Beach administrate, the Palm Beach office?</b></p> <p>23 A Okay.</p> <p>24 <b>Q Who at the Palm Beach office is responsible</b></p> <p>25 <b>for assigning caregivers to patients?</b></p>

<p style="text-align: right;">Page 22</p> <p>1 A The care coordinators.</p> <p>2 <b>Q Are you a care coordinator at the Palm Beach</b></p> <p>3 <b>office?</b></p> <p>4 A I can be.</p> <p>5 <b>Q Sometimes you slip into that role?</b></p> <p>6 A Sure.</p> <p>7 <b>Q Is Diana Ramirez a care coordinator?</b></p> <p>8 A She can be.</p> <p>9 <b>Q Who are the designated care coordinators at</b></p> <p>10 <b>the Palm Beach office?</b></p> <p>11 A Well, right now currently we have Cassandra,</p> <p>12 we have Jisset, we have Analia, we have Astrid, we have</p> <p>13 Madeline, we have Jonathan Torres, we have myself, we</p> <p>14 have an Analia.</p> <p>15 <b>Q Okay. You mentioned quite a few people --</b></p> <p>16 A Yes.</p> <p>17 <b>Q -- about how many care coordinators would you</b></p> <p>18 <b>say they are at the Palm Beach office?</b></p> <p>19 A We definitely have five and it could be up to</p> <p>20 seven because, you know, we, you know, it's that thing</p> <p>21 about other job duties has been acquired and with COVID-</p> <p>22 19 and everything that's been going on, we have to be</p> <p>23 prepared here.</p> <p>24 So, employees here have to be prepared to, you</p> <p>25 know, jump into, you know, into any role, you know.</p>	<p style="text-align: right;">Page 24</p> <p>1 <b>patient care?</b></p> <p>2 A One of them does and the patients and the, you</p> <p>3 know, medication management, that type of thing.</p> <p>4 <b>Q What does the other nurse or doctor do on-</b></p> <p>5 <b>staff?</b></p> <p>6 A They just check records just to make sure that</p> <p>7 everything is it's in place, you know, and they went</p> <p>8 meeting federal and state regulations.</p> <p>9 <b>Q What is the name of that person that make sure</b></p> <p>10 <b>that All VIP is meeting state and federal regulations?</b></p> <p>11 A Well, besides myself because I'm the</p> <p>12 administrator, so the state will first come to me,</p> <p>13 they'll ask me, they'll come to me, then they'll go to</p> <p>14 the nurse and that'll be Dr. Clark.</p> <p>15 <b>Q What's the first name?</b></p> <p>16 A Dr. Clark, Diane Clark.</p> <p>17 <b>Q Diane Clark.</b></p> <p>18 A Dr. Diane Clark.</p> <p>19 <b>Q How long has she worked for All VIP?</b></p> <p>20 A I think she's been here, I'm going to say</p> <p>21 maybe a year or so.</p> <p>22 <b>Q Did Diane Clark work at All VIP at the same</b></p> <p>23 <b>time as Cruz Valdivieso?</b></p> <p>24 A I don't think so. Not at least -- not at the</p> <p>25 capacity, no. I'm going to say no and again, we did --</p>
<p style="text-align: right;">Page 23</p> <p>1 <b>Q Okay.</b></p> <p>2 A So, and so that's what we tend to do, is we</p> <p>3 want to make sure that our client is staffed and that</p> <p>4 are not home alone.</p> <p>5 <b>Q How many employees does All VIP have in the</b></p> <p>6 <b>Palm Beach office?</b></p> <p>7 A Oh, geez. In this office we probably have,</p> <p>8 let's see. There's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,</p> <p>9 12, 13, 14, like, 15, 16.</p> <p>10 <b>Q And are the majority of the employees at the</b></p> <p>11 <b>Palm Beach office consider care coordinators?</b></p> <p>12 A No. Not the majority, no, but they pretty</p> <p>13 much prepared to jump into that role if need be.</p> <p>14 <b>Q Okay. What other positions are there at the</b></p> <p>15 <b>Palm Beach office besides care coordinator?</b></p> <p>16 A Receptionist, office manager, alternate</p> <p>17 administrator, the nurse.</p> <p>18 <b>Q Is there an on-staff nurse, I mean, on-call</b></p> <p>19 <b>nurse at all times?</b></p> <p>20 A Well, if we do, we have two that we have, you</p> <p>21 know, that we have, one is a doctor that, but role here</p> <p>22 is -- has a nurse.</p> <p>23 <b>Q And do the nurses that you're referring to,</b></p> <p>24 <b>one who's a doctor and I guess the other one as a nurse</b></p> <p>25 <b>working in the Palm Beach office, do they provide</b></p>	<p style="text-align: right;">Page 25</p> <p>1 we, you know, Cruz was doing non-medical services, when</p> <p>2 you provide medical services, you don't need a skilled</p> <p>3 person involved.</p> <p>4 <b>Q Okay. Did any of the care coordinators that</b></p> <p>5 <b>you mentioned previously work at All VIP at the same</b></p> <p>6 <b>time as Cruz Valdivieso?</b></p> <p>7 A Yes, yeah. Yes, but remember, they're in</p> <p>8 different offices, but, yes. So, I don't even know if</p> <p>9 they know her personally, but, yes.</p> <p>10 <b>Q Okay. And when you say they're in different</b></p> <p>11 <b>offices, you mean different physical offices or you mean</b></p> <p>12 <b>the different umbrellas and --</b></p> <p>13 A Physical, no, physical offices were West Palm</p> <p>14 Beach and Cruz was mainly, she was working for Broward</p> <p>15 and they are in Deerfield Beach.</p> <p>16 <b>Q Have you ever met Cruz Valdivieso?</b></p> <p>17 A I think I saw her in the office maybe once or</p> <p>18 twice.</p> <p>19 <b>Q And which office are you referring to?</b></p> <p>20 A West Palm Beach.</p> <p>21 <b>Q What reason would Cruz Valdivieso have to be</b></p> <p>22 <b>at the West Palm Beach office?</b></p> <p>23 A She came in one day, something about her</p> <p>24 paycheck, her earnings not being correct. So, I wrote</p> <p>25 her a check and that's how I recall seeing her.</p>

<p style="text-align: right;">Page 26</p> <p>1 <b>Q As the owner of All VIP, are you always aware</b>  2 <b>of all of the home health aides that are working in all</b>  3 <b>of the offices?</b>  4 A If I would say always, I probably will be  5 lying, but I try my very best to be involved as much as  6 I can.  7 <b>Q Who is responsible for hiring decisions at the</b>  8 <b>Broward office?</b>  9 A Diana, Diana Ramirez.  10 <b>Q Are you Diana Ramirez's direct supervisor?</b>  11 A Yes.  12 <b>Q Do you have to approve all of Diana Ramirez's</b>  13 <b>hiring decisions?</b>  14 A No. That will be micromanagement and I --  15 frankly, I don't have time for that.  16 <b>Q I understood. Okay. Does Diana Ramirez had</b>  17 <b>to have her -- if she chooses to employ a caregiver,</b>  18 <b>does that decision have to be run by anybody else?</b>  19 A No, she -- we have to follow state guidelines.  20 So, the state will tell us how to hire them.  21 So, she follows those instructions. Now when  22 I do audits here, if I see that they hire someone that  23 we're not allowed to hire, then they will be hearing  24 from me--  25 <b>Q Okay.</b></p>	<p style="text-align: right;">Page 28</p> <p>1 she must report it.  2 Alzheimer's, if she's working with an  3 Alzheimer's client, she needs to know how to deal with  4 that. So, that's -- those are the key CEU that they  5 must have.  6 When they come to apply and get on our roster,  7 they must have that plus CPR card and that needs to be  8 renewed every two years.  9 We also want them to have a professional  10 liability because God forbid something happens because,  11 you know, health care and people always suing in health  12 care, that protects a caregiver especially when she's an  13 independent contractor.  14 So they should also have professional  15 liability. There's also now, many insurance companies  16 now offer more protection for them from like a Worker's  17 Comp policy for them as well and that's optional for  18 them, but the most important thing, the CPR card, the  19 criminal background check and the CEUs that the state  20 when they come to audit the office they make sure that  21 these caregivers have.  22 Now in Palm Beach County, there's an extra  23 step. Now the county wants the caregivers to register  24 with the county. So, now the county also is involved  25 and who can be a caregiver, who cannot be caregiver.</p>
<p style="text-align: right;">Page 27</p> <p>1 A -- then I step in.  2 <b>Q Okay. And the state guidelines that tell All</b>  3 <b>VIP how to higher caregivers are going to be the same</b>  4 <b>from county to county, correct?</b>  5 A That is correct.  6 <b>Q So, please just tell me what those state</b>  7 <b>guidelines basically say, what considerations does All</b>  8 <b>VIP have to take or what factors does All VIP have to</b>  9 <b>take into consideration when hiring a caregiver?</b>  10 A Okay. First thing I remember, we are in  11 home -- we provide home care, so we are a nurse  12 registry. For the nurse registry when we hire a  13 caregiver, she's going to be the client's employee.  14 This caregiver has to have a background check  15 within the 50 states. So, that's a required and we  16 must. So, we have to make sure she has and she needs to  17 be -- to do this every five years.  18 So, criminal background, she needs to have her  19 HIV, HIVA certificate, CEU, she must have a medication  20 management certificate. It's kind of like an assistance  21 with medication management so she needs to know how to  22 remind the client how to take the meds and what  23 happened. That's key.  24 She also needs to know about domestic violence  25 because as a caregiver, if she sees that in the home,</p>	<p style="text-align: right;">Page 29</p> <p>1 That's not happening in Broward thou.  2 <b>Q Okay. When did on Palm Beach County start</b>  3 <b>that mandate?</b>  4 A Oh, gosh. Maybe I think more than five years  5 ago. It's been a while now, but it's only in Palm Beach  6 County.  7 <b>Q And you mentioned that All VIP requires its</b>  8 <b>caregivers to have professional liability insurance?</b>  9 A We do. I mean, it's not a mandate, mandated,  10 but we do and it's for protection for the caregiver and  11 the client.  12 <b>Q How does All VIP verify that the caregiver has</b>  13 <b>professional liability insurance?</b>  14 A We ask them to provide the form, you know, the  15 certificate of insurance or we can purchase it for them,  16 you know, if they liked, this way we know for sure it's  17 legit.  18 <b>Q If All VIP does purchase professional</b>  19 <b>liability insurance for the caregiver, how is -- how</b>  20 <b>does the caregiver reimburse All VIP?</b>  21 A It all depends. You know, sometimes they will  22 say to us, "You know, we don't have any money right now,  23 do you mind taking out of my earnings?" And so I did say  24 yes or no, it all depends, you know, how well we know  25 them or they'll give us a credit card information or</p>

<p style="text-align: right;">Page 30</p> <p>1 they'll write us a check --</p> <p>2 <b>Q Okay.</b></p> <p>3 A -- or they will give us a cash.</p> <p>4 <b>Q Did Cruz Valdivieso come to All VIP already</b></p> <p>5 <b>having professional liability insurance?</b></p> <p>6 A That I wouldn't know, but I -- if, you know,</p> <p>7 she would -- I don't know if she came, but she would</p> <p>8 definitely would have to get one because that's</p> <p>9 something we encourage them to do. Again, we encourage</p> <p>10 them to do it.</p> <p>11 <b>Q Okay.</b></p> <p>12 A They are not, you know, they don't have to do</p> <p>13 it and then at that point if they decide not to do it,</p> <p>14 you know, we discussed with the client and it's up to</p> <p>15 the client to agree if they want to keep them or if they</p> <p>16 want us to replace the caregiver because again, it's up</p> <p>17 to the client to make that decision.</p> <p>18 <b>Q Would -- do you think Diane Ramirez would</b></p> <p>19 <b>better know if Cruz Valdivieso had professional</b></p> <p>20 <b>liability insurance?</b></p> <p>21 A Yes, she would be better to know.</p> <p>22 <b>Q So, --</b></p> <p>23 (Thereupon, a short discussion was held off</p> <p>24 record.)</p> <p>25 (Deposition resumed.)</p>	<p style="text-align: right;">Page 32</p> <p>1 <b>Q And are -- does VIP, All VIP consider home</b></p> <p>2 <b>health aides to be domestic service employees?</b></p> <p>3 A That depends. Can you be more specific?</p> <p>4 That's too general for me.</p> <p>5 <b>Q Right. So, you previously mentioned that as</b></p> <p>6 <b>an administrator for All VIP you're responsible for, I</b></p> <p>7 <b>forget exactly how you worded it, but I think, you know,</b></p> <p>8 <b>monitoring state and federal regulations that apply to</b></p> <p>9 <b>the agency.</b></p> <p>10 A Um-hum.</p> <p>11 <b>Q And so for the record that you said um-hum</b></p> <p>12 <b>there --</b></p> <p>13 A I'm sorry.</p> <p>14 <b>Q -- so let me re-ask the question.</b></p> <p>15 A I didn't --</p> <p>16 <b>Q No, it's fine. Believe it's going to happen a</b></p> <p>17 <b>few times during the deposition, it happens.</b></p> <p>18 <b>Okay. So, let me just repeat that question.</b></p> <p>19 <b>As an administrator for All VIP, you're responsible for</b></p> <p>20 <b>monitoring the state and federal regulations that apply</b></p> <p>21 <b>to the agency, correct?</b></p> <p>22 A Yes, I'm supposed to conduct audits and make</p> <p>23 sure that we're following guidelines.</p> <p>24 <b>Q Okay. And as an administrator, are you aware</b></p> <p>25 <b>that there is a title, a legal title called the domestic</b></p>
<p style="text-align: right;">Page 31</p> <p>1 BY MR. CUMMINGS:</p> <p>2 <b>Q Okay. So Ms. McKinnon, I believe that your</b></p> <p>3 <b>question, the record stopped running in the middle of</b></p> <p>4 <b>your answer and essentially you were just explaining to</b></p> <p>5 <b>me how All VIP finds its caregivers.</b></p> <p>6 <b>So, you mentioned Craigslist, you said</b></p> <p>7 <b>something about going to reach now to medical schools</b></p> <p>8 <b>and if you could just kind of pick up where you left off</b></p> <p>9 <b>with your answers.</b></p> <p>10 A The medical schools.</p> <p>11 <b>Q Okay.</b></p> <p>12 A We go to the medical schools and we asked them</p> <p>13 to please refer over their top students and many times</p> <p>14 client they'll send over caregivers as well.</p> <p>15 <b>Q The clients already have --</b></p> <p>16 A Yeah, many times --</p> <p>17 <b>Q Okay.</b></p> <p>18 A -- they'll refer caregivers over.</p> <p>19 <b>Q And Cruz Valdivieso case, do you know how All</b></p> <p>20 <b>VIP came to contact her or who made contact with who</b></p> <p>21 <b>first?</b></p> <p>22 A No. And that again, that would probably be a</p> <p>23 good question for Diana Ramirez, I mean, I can guess</p> <p>24 either the correct list or maybe the client referred</p> <p>25 her, I mean, but that's just a guess.</p>	<p style="text-align: right;">Page 33</p> <p>1 <b>service employee?</b></p> <p>2 A Never heard of it here in all my years in</p> <p>3 homecare. So, I -- we don't use it obviously. I've</p> <p>4 been doing this for many years in home health and we've</p> <p>5 never used it. So, I don't know.</p> <p>6 <b>Q Are you familiar with the Fair Labor Standards</b></p> <p>7 <b>Act?</b></p> <p>8 A Yes, I am. I have to be.</p> <p>9 <b>Q Why is it?</b></p> <p>10 A Because as a nurse registry we have to make</p> <p>11 sure that when we hire independent contractors, that we</p> <p>12 treat them as such and when they walk into his office</p> <p>13 and they apply, that they're aware that they're</p> <p>14 independent contractors and that they're aware that they</p> <p>15 are the employees of the client, not the agents.</p> <p>16 <b>Q What is All VIPs relationship to its home</b></p> <p>17 <b>health aides?</b></p> <p>18 A We process the application, we interview them,</p> <p>19 we make sure that they meet state and federal guidelines</p> <p>20 and we pay them on a weekly basis or when the client</p> <p>21 pays because many clients don't want to be bothered with</p> <p>22 money with their caregivers. That's too messy for them.</p> <p>23 <b>Q And so does All VIPs serve as a middleman</b></p> <p>24 <b>between the caregiver and the client?</b></p> <p>25 A Yes and the insurance company.</p>

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1 **Q And you mentioned that you have to be familiar**  
 2 **with the FLSA to make sure that -- let's just stick with**  
 3 **home health aides in particular, are being treated as**  
 4 **independent contractors. What did you mean by that?**  
 5 A Well, for instance when they come in, you  
 6 know, we give them all the information that they need to  
 7 know the independent contractors.  
 8 We also give them the option if they want to  
 9 go out and get their own tax ID number versus using  
 10 their -- Social Security Number.  
 11 We talked to them about overtime, we tell them  
 12 as an independent contractor they can work over 40  
 13 hours, but they are not entitled to overtime.  
 14 We also talked to them about holiday pay,  
 15 they're not entitled to that either. However, if the  
 16 client wants to pay, how are they time, you know, time  
 17 and a half, what have you, that's okay, we can discuss  
 18 that with the client and we let them know that they are  
 19 the employees of the client.  
 20 We monitor the client services, when it comes  
 21 to them we just make sure that they are meeting federal  
 22 and state regulations because if we do not AHCA, the  
 23 state will close us down if not give us a hefty fine.  
 24 **Q And A-C-A is that what you're referring to?**  
 25 A A-H-C-A, AHCA. I'm sorry.

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1 **Q A-H-C-A.**  
 2 A A-H-C-A, AHCA.  
 3 **Q What -- do you know what that stands for?**  
 4 A Agency of Health Care Administration.  
 5 **Q Okay. Does that agency ACHA provide audits**  
 6 **or -- sorry, not provide. Does that agency do audits of**  
 7 **All VIP?**  
 8 A They do. They do inspection. They do. They  
 9 do inspection. We just had one recently as a matter of  
 10 fact in the Palm Beach office.  
 11 **Q Okay. And when you say inspections, what is**  
 12 **ACHA inspecting for?**  
 13 A They inspect the records, they inspect how we  
 14 get -- how we get our referrals, how we process those  
 15 referrals and then they check the caregivers that we  
 16 assigned to these clients, you know, that we refer to  
 17 work with the clients, they check their records to make  
 18 sure they are meeting state and federal guidelines.  
 19 Like they made sure that they have a good  
 20 criminal background check. They made sure that they  
 21 have a CPR card that is not expired.  
 22 That they have the HIVA certificate. That,  
 23 you know, that they know that they have Alzheimer's  
 24 certificate on file, domestic violence certificate on  
 25 file, so they check for those things.

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1 They check their application. They make sure  
 2 that we are letting these caregivers know that they're  
 3 independent contractors. They check.  
 4 They check for signatures. They check that we  
 5 make sure that we discuss salary. They check all of  
 6 that when they come to do the inspections.  
 7 **Q But normally ACHA is only going per All VIP**  
 8 **office, not to every single office for one inspection?**  
 9 A Exactly. They go for one office. So, for  
 10 Palm Beach County, it's for the license, they will come  
 11 to West Palm Beach. For Broward County, they're going  
 12 to go to Deerfield Beach to do an inspection.  
 13 **Q Okay. The -- is ACHA required to do an**  
 14 **inspection at any particular interval, like, is it like**  
 15 **once a year or its just random?**  
 16 A I think while in all my years they usually do  
 17 it, like, every two years usually. After COVID-19  
 18 things changed a lot, you know, they don't come as often  
 19 as they used to, but they normally come, like, every two  
 20 years unannounced.  
 21 **Q Got it. Going back to overtime, you mentioned**  
 22 **that All VIP home health aides are informed that they're**  
 23 **not entitled to overtime. Is that correct?**  
 24 A That is very correct.  
 25 **Q How are they told that or what point in their**

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1 **employment are they told that?**  
 2 A They're told the moment they walk in and they  
 3 get that their application. In fact, one of the reasons  
 4 many clients come to us is because they appreciate the  
 5 fact that the independent contractors can work more than  
 6 40 hours.  
 7 **Q And when you say come to us, do you mean All**  
 8 **VIP in particular?**  
 9 A All VIP in particular or any nurse registry.  
 10 This was specifically through during COVID-19. Many  
 11 clients did not want three or four caregivers coming  
 12 into their rooms, in and out.  
 13 **Q Okay. So sometimes because of the**  
 14 **restrictions on hours some home health aides can only**  
 15 **work 40 hours and therefore clients have to be assigned**  
 16 **different caregivers?**  
 17 A Well, if we're talking about a home health  
 18 agency which is different than home nurse registry,  
 19 those home health agencies, they have to pay for all the  
 20 time after 40 hours and they can supervise their  
 21 caregivers, they -- then they must pay them, but a nurse  
 22 registry, we do not supervise the caregivers. We  
 23 monitor our services with the client. We work for the  
 24 client.  
 25 In that particular instance, an independent

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1 contractor can work 40 hours or more if the client  
 2 desires that.  
 3 **Q So, the client is always the one who**  
 4 **determines the number of hours that the caregivers**  
 5 **provide?**  
 6 A Yes and no, because remember, if it's private,  
 7 yes. If it's insurance, if the insurance company has  
 8 paid for it, no.  
 9 **Q Understood. Okay. Got it. So, the client is**  
 10 **paying out of pocket, they get to make the rules.**  
 11 A A client.  
 12 **Q A client does.**  
 13 A And many times that is when that -- when it's  
 14 a private client, there's a negotiation process. The  
 15 client will either discuss it with the caregiver because  
 16 we will refer the caregiver to the client and at that  
 17 point when they need, they can also discuss salary, they  
 18 can discuss the hours, they can discuss the duties, the  
 19 tasks, all of that stuff without even the agency  
 20 involved.  
 21 **Q Interesting. So, once All VIP assigns a**  
 22 **caregiver, let's say more specifically once All VIPs**  
 23 **assign a home health aide to a client, then the client**  
 24 **is essentially paying for the service to the caregiver?**  
 25 A No, it's up to the client, but most clients

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1 don't want to do that. They have the option, of course,  
 2 but most clients don't want to do that because it  
 3 becomes too messy. So, they don't want -- they don't  
 4 want to be involved with that.  
 5 So, they'll set up an account with us I say  
 6 with a credit card and they'll tell the agency charge,  
 7 you know, charge the credit card once a month or every  
 8 two weeks or weekly, what have you.  
 9 The client will let us know how they're  
 10 going to pay for services. The client will also sign a  
 11 timesheet indicating that the caregiver did work those  
 12 hours, okay, you may pay her.  
 13 **Q Got it. Okay. So, stay tuned for a second.**  
 14 **So I'm going to show you an exhibit. Okay. Ms.**  
 15 **McKinnon, I'm now showing you what I'm marking as --**  
 16 A A timesheet.  
 17 **Q Oh, yeah. I'm showing you what I'm marking as**  
 18 **Exhibit B for the deposition record.**  
 19 (Thereupon, Plaintiff's Exhibit B was entered  
 20 into the record.)  
 21 BY MR. CUMMINGS:  
 22 **Q And you just mentioned that this is a**  
 23 **timesheet. So, my first question to you was going to**  
 24 **be, do you recognized a document like this?**  
 25 A Yes.

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1 **Q Okay. And how do you recognize this type of a**  
 2 **document?**  
 3 A Well, because it's the one we gave our  
 4 caregivers, it's the one that ACHA approved when I first  
 5 opened the business.  
 6 It's the one we've been using since 2016 and  
 7 that's our timesheet that we give to caregivers.  
 8 **Q You mentioned that the caregivers are supposed**  
 9 **to sign off on these timesheets. Is that the-**  
 10 A That is correct.  
 11 **Q Is that the line at the bottom that says**  
 12 **client signature?**  
 13 A That is supposed to be a client signature on  
 14 the bottom approving the timesheet.  
 15 **Q Okay. And who provides the timesheet to the**  
 16 **client, is it the caregiver?**  
 17 A That's right.  
 18 **Q Okay.**  
 19 A And the client is supposed to read it and if  
 20 they approve, the client has to prove. They signed it.  
 21 **Q Now what I'm showing you is a 53 page document**  
 22 **and it has different timesheets. These were provided by**  
 23 **your company, by All VIP.**  
 24 I'm not sure if you're aware of that and that,  
 25 but that's why it has these numbers at the bottom of

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1 each page where it says VIP docs.  
 2 That's what we call a Bates stamp number. So,  
 3 just for the record, for the deposition record I am  
 4 showing Ms. McKinnon the document that's Bate Stamp  
 5 Number 11, VIP docs Number 11, which is a timesheet.  
 6 Okay. Now on these timesheets, let's just  
 7 stick to the first one I'm showing you here on Page 1.  
 8 I see on the left hand side there's a column filled  
 9 with, it looks like different activities.  
 10 Who marks off the activities that were being  
 11 performed for the client?  
 12 A The caregiver.  
 13 **Q Got it. And does the caregiver also put**  
 14 **the -- fill in the time in and time out portions of the**  
 15 **timesheet?**  
 16 A Yes.  
 17 **Q Is it fair to say that the caregiver is**  
 18 **responsible for filling out everything except the part**  
 19 **that says client signature on a timesheet?**  
 20 A That's very fair.  
 21 **Q Are there different timesheets for different**  
 22 **types of All VIP personnel, meaning, does a home health**  
 23 **care aide have a different list of activities than a**  
 24 **certified nursing assistant?**  
 25 A No, and there's no need.

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1 **Q Why is that?**  
 2 A Because in home care a CNA will not be working  
 3 normally with an RN. A CNA is more for facilities, for  
 4 hospitals because they work under our RN. In home care,  
 5 it's very rare to have a working under an RN.  
 6 **Q Okay.**  
 7 A And in hospital CNAs don't clean. In a home  
 8 environment, yes, they do. They have to do light  
 9 housekeeping.  
 10 **Q Understood. Okay. And so just to clarify**  
 11 **what you're saying, home health aides and CNAs will both**  
 12 **use the type of timesheet that we see here if they're**  
 13 **providing in-home care to a patient?**  
 14 A Yes, they will use the same timesheet.  
 15 **Q Are timesheets only used by people providing**  
 16 **non-medical services for All VIP?**  
 17 A That timesheet predominantly, yes.  
 18 **Q Who are timesheets ultimately turned into once**  
 19 **they're completed?**  
 20 A They send them to their office. They can, you  
 21 know, in this case they will be sending it to Broward  
 22 office so they can be processed and they can get paid  
 23 and we can submit the invoice to the insurance company.  
 24 **Q Okay. If it's insured that's paying for the**  
 25 **service, then it goes to the insurance company?**

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1 A The insurance company will get an invoice,  
 2 this will stay in the record, so if the insurance  
 3 company wants to come to the office and do an audit,  
 4 they can review.  
 5 **Q Well, what I'm trying to -- let me just take**  
 6 **this down for a second. What I'm mainly asking what the**  
 7 **question is, you said that the timesheets will be**  
 8 **submitted to insurance companies, but not all patients**  
 9 **are paying through an insurance company, correct?**  
 10 A Yeah. We don't, in this case for Medicaid we  
 11 do not send them the timesheets. We only send them the  
 12 invoice.  
 13 The timesheet stayed in the clients file for  
 14 two reasons. For the state ACHA when they come to do an  
 15 inspection, they might want to see that file and if the  
 16 insurance company wants to come in and conduct an audit.  
 17 So, those timesheet must stay in the clients file.  
 18 **Q Got it. You mentioned that the caregivers**  
 19 **will e-mail the timesheet back into the office?**  
 20 A They can, but, you know, but more importantly  
 21 they're supposed to be clocking in and clocking out and  
 22 that's another state regulation.  
 23 In this case, Ms. Cruz never clocked in and  
 24 never clocked out. Once they do that, there's no need  
 25 to be sending over the timesheets because that is

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1 registered automatically.  
 2 **Q How do home health aides like Ms. Cruz clock**  
 3 **in and out?**  
 4 A There is a software which we pay for. In this  
 5 case is HHAexchange and it's approved by the state.  
 6 **Q Is HHAeXchange an application that would be on**  
 7 **somebody's phone?**  
 8 A Yes.  
 9 **Q Does that mean that all home health aides are**  
 10 **required to have a smartphone so that they can use the**  
 11 **HHA application?**  
 12 A They are required or they can use if the  
 13 client has a home phone, you know, a landline, they can  
 14 use that as well.  
 15 **Q So, home health aides also have the option of**  
 16 **calling a number to clock in and clock out?**  
 17 A That is correct.  
 18 **Q Through HHAeXchange?**  
 19 A Yes.  
 20 **Q When did you first become aware or when did**  
 21 **All VIP first become aware of issues with Ms. Cruz not**  
 22 **clocking in and out?**  
 23 A A long time ago and it was addressed to her.  
 24 **Q Did you, Ms. McKinnon ever personally speak to**  
 25 **Cruz Valdivieso about clocking in and clocking out?**

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1 A I sure did when she came into this office to  
 2 get a paycheck where she says that she wasn't paid  
 3 correctly and I reminded her to avoid those issues, to  
 4 please clock in and clock out.  
 5 Furthermore, because I'm not supposed to be  
 6 bossing her around, you know, because she's an  
 7 independent contractor, I made it very clear to her,  
 8 it's not my rule, it's the state, the federal  
 9 government, State and federal government and we have to  
 10 follow these guidelines.  
 11 **Q The incident that or the time that you were**  
 12 **talking about when you spoke to Ms. Cruz Valdivieso, is**  
 13 **that the same time when you said you would only really**  
 14 **met her once because she came in for a pay issue?**  
 15 A Yeah, I remember maybe seeing her maybe once  
 16 or twice, you know, I have over thousand caregiver, so  
 17 sometimes, you know, it's hard for me, you know, to  
 18 remember.  
 19 I didn't really have an, you know, I didn't  
 20 really have a relationship with her. That was more  
 21 Diana Ramirez in that office and, you know, in Deerfield  
 22 Beach.  
 23 I did hear of her and because of the payroll,  
 24 you know, situation and of course, you know, when she --  
 25 when we ended, you know, when we took her off the

<p style="text-align: right;">Page 46</p> <p>1 roster, when we had that situation, that's pretty much,</p> <p>2 you know, when I was involved with her --</p> <p>3 <b>Q Okay.</b></p> <p>4 A -- but I do recall seeing her here, I do</p> <p>5 recall writing her manual check, I do recall speaking to</p> <p>6 her. That much I do recall.</p> <p>7 <b>Q When you say manual check, you mean actual</b></p> <p>8 <b>physical check that was given to her --</b></p> <p>9 A Yeah.</p> <p>10 <b>Q -- instead of direct deposit?</b></p> <p>11 A Yes.</p> <p>12 <b>Q Okay. Just to go back a little bit. Did Cruz</b></p> <p>13 <b>Valdivieso have the HHAeXchange application on her</b></p> <p>14 <b>phone?</b></p> <p>15 A She should.</p> <p>16 <b>Q Would Diana Ramirez be a better person ask</b></p> <p>17 <b>that question to?</b></p> <p>18 A She -- yes, she would be definitely, but, you</p> <p>19 know, let me see if I can check here quickly, but yeah,</p> <p>20 definitely Diana would be the one.</p> <p>21 She definitely knew because I can tell by</p> <p>22 checking the computer, I have her caregiver code, a</p> <p>23 mobile ID number. So, she was definitely informed and</p> <p>24 she definitely downloaded the software on her</p> <p>25 smartphone.</p>	<p style="text-align: right;">Page 48</p> <p>1 also come here to the office and we help them. I also</p> <p>2 send out -- through HHAeXchange I can send messages to</p> <p>3 the caregivers.</p> <p>4 I've said numerous times, messages to them, go</p> <p>5 to YouTube, because there are tutorials on YouTube in</p> <p>6 Spanish as well which this can help her tremendously.</p> <p>7 So, we've covered this numerous times with the</p> <p>8 caregivers, in English and Spanish.</p> <p>9 <b>Q Did Cruz Valdivieso ever complained that she</b></p> <p>10 <b>was having issues clocking in and clocking out through</b></p> <p>11 <b>HHAeXchange?</b></p> <p>12 A Not to me, so I don't recall, she could have,</p> <p>13 but again, I'm sorry, I cannot -- I don't recall. Maybe</p> <p>14 Diana Ramirez maybe, but I don't recall having that</p> <p>15 conversation with her.</p> <p>16 <b>Q So, at what point -- how often are All VIP</b></p> <p>17 <b>home health aides paid by All VIP?</b></p> <p>18 A That depends. If they clock in and clock out</p> <p>19 or submit their timesheets as they're supposed to, they</p> <p>20 can get paid every Friday.</p> <p>21 If not, they will get paid when the client</p> <p>22 pays or the insurance company pays and we tell them that</p> <p>23 as well. They are independent contractors.</p> <p>24 <b>Q So, essentially does the client or the</b></p> <p>25 <b>insurance company paying for the services that they were</b></p>
<p style="text-align: right;">Page 47</p> <p>1 <b>Q Okay. So, All VIP has a way to verify if a</b></p> <p>2 <b>caregiver had the software on their phone?</b></p> <p>3 A Absolutely.</p> <p>4 <b>Q Okay. And it's in a database that you just</b></p> <p>5 <b>refer to?</b></p> <p>6 A Yes, an HHAeXchange.</p> <p>7 <b>Q Oh, I see. Okay. And does HHAeXchange, like</b></p> <p>8 <b>an online account that All VIP has?</b></p> <p>9 A It's like a software that we, you know, that</p> <p>10 we use and we pay for. It can also be free, I mean, it</p> <p>11 all depends, you know, what you sign up for because it</p> <p>12 is state mandated.</p> <p>13 So, therefore the state also pays for this</p> <p>14 program and any agency that has a contract with Medicaid</p> <p>15 needs to use this software.</p> <p>16 <b>Q At what point in the hiring process are</b></p> <p>17 <b>caregivers told that they will have to use HHAeXchange</b></p> <p>18 <b>to clock in and clock out?</b></p> <p>19 A The very beginning. Especially if they're</p> <p>20 going to work for a Medicaid client.</p> <p>21 <b>Q Is there paperwork that or like onboarding</b></p> <p>22 <b>paperwork that caregivers are provided with that</b></p> <p>23 <b>explains the HHAeXchange process for clocking in and</b></p> <p>24 <b>clocking out?</b></p> <p>25 A Yes, especially they need it. Yes. They can</p>	<p style="text-align: right;">Page 49</p> <p>1 given and then All VIP allocates that amount of money to</p> <p>2 pay the caregiver?</p> <p>3 A Yes, we bill, they send us the money and they</p> <p>4 are usually pretty good. They usually pay every week</p> <p>5 and we send that over to the caregivers. That's what</p> <p>6 we're supposed to do.</p> <p>7 We're supposed to pay the caregivers. We're</p> <p>8 getting that money so we can pay the caregivers so that</p> <p>9 the client can continue receiving services.</p> <p>10 <b>Q Does All VIP -- does All VIPs profit come from</b></p> <p>11 <b>the difference in the service that's provided to the</b></p> <p>12 <b>caregiver and the amount that's actually charged to the</b></p> <p>13 <b>care -- I'm sorry, the other way around.</b></p> <p>14 <b>Does All VIPs profit come from the difference</b></p> <p>15 <b>in the service that's being provided to the patient and</b></p> <p>16 <b>the amount that All VIP charges for that service?</b></p> <p>17 A Trying to see if I understand that. Let's</p> <p>18 see. So, I'm going to make sure I answered this</p> <p>19 question correctly. I'm not sure if I understood.</p> <p>20 <b>Q Okay. And so let me see if I can clarify a</b></p> <p>21 <b>little bit by giving a number example and I'll just used</b></p> <p>22 <b>fairly basic numbers for the point of an example.</b></p> <p>23 So for -- let's say a home health aide is with</p> <p>24 a client all day long and those services are being</p> <p>25 charged at or I guess the value of those services is,</p>

<p style="text-align: right;">Page 50</p> <p>1 you know, \$20 for the day. Okay.</p> <p>2 Does All VIP then send a bill for \$30 to the</p> <p>3 client?</p> <p>4 A All VIP care, it's kind of like a staffing</p> <p>5 agency, that's how we, you know, I'm not sure if you</p> <p>6 ever use a temp before in your office, you negotiate a</p> <p>7 rate and that's what you bill and so that's what we do.</p> <p>8 If the rate is \$20 an hour and the aide is there, let's</p> <p>9 say three hours, that's what we bill.</p> <p>10 If the contract says that the aide is supposed</p> <p>11 to be there four hours, but yet the aide only work</p> <p>12 three, we still bill what the aide worked.</p> <p>13 Q All right.</p> <p>14 A So, again, we -- our profit and the way we do</p> <p>15 business, run business just has a staffing company does.</p> <p>16 Q Okay.</p> <p>17 A And I hope I answered that correctly because</p> <p>18 I'm still a little confused.</p> <p>19 Q No. I get it. I understand. Okay.</p> <p>20 Understood. All right. Are there ever situations where</p> <p>21 a home health aide is providing services to patients,</p> <p>22 but they are not being compensated for the services that</p> <p>23 they're providing?</p> <p>24 A That's not the plan, mean, that's not supposed</p> <p>25 to happen. Usually, you know, if you work, you're</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Okay. And if a client does not pay for</p> <p>2 services that have been rendered to them, what is ALL</p> <p>3 VIPs role in trying to obtain payment from them?</p> <p>4 A Well we would try to help as much as possible,</p> <p>5 but again, because they're independent contractors, they</p> <p>6 will have to sue the client in Court.</p> <p>7 Q Are the caregivers informed that they would</p> <p>8 have to sue clients in Court if clients aren't paying?</p> <p>9 A Oh, yes. And again like I said, you know,</p> <p>10 these caregivers are not only -- they don't just</p> <p>11 register one agency, they register with multiple</p> <p>12 agencies and trust me, they all get the same</p> <p>13 information.</p> <p>14 So, let's just say for argument's sake that</p> <p>15 All VIP Care neglected to tell them. Well, guess what?</p> <p>16 The other five agencies that they register with, one of</p> <p>17 them told them. So, maybe all four told them.</p> <p>18 So, you know, a caregiver that has experience,</p> <p>19 has been a caregiver for more than a year or three, 10</p> <p>20 years is well versed. She knows.</p> <p>21 Q If -- so, another example or another situation</p> <p>22 does -- what does All VIP do when an insurance company</p> <p>23 is not paying for a service that has been rendered by</p> <p>24 caregiver?</p> <p>25 A Well, for insurance company we normally, we</p>
<p style="text-align: right;">Page 51</p> <p>1 entitled to get paid.</p> <p>2 Q Right.</p> <p>3 A What kind of reputation would I have in the</p> <p>4 community if we will be -- if we behave in that fashion,</p> <p>5 so.</p> <p>6 Q Right. But are there situations where home</p> <p>7 health aides, you know, fill out their timesheets, they</p> <p>8 clock in and clock out correctly and once the time</p> <p>9 sheets are submitted, they're waiting to be paid because</p> <p>10 either the client didn't pay or the insurance company</p> <p>11 did not pay?</p> <p>12 A That is correct. On those two that you just</p> <p>13 said there, those two reasons, yes, they may not get</p> <p>14 paid and that is told to them in the beginning, they are</p> <p>15 independent contractor.</p> <p>16 So, you're going to get paid, there might be a</p> <p>17 problem in your pay, don't expect to get paid like an</p> <p>18 employee does at a company, you know. It's different.</p> <p>19 So, and we usually tell them, you know, we'll</p> <p>20 call them up and we'll talk to them, you know, we don't</p> <p>21 want them expecting a paycheck when they're not going to</p> <p>22 receive one and we also call clients as well and we'll</p> <p>23 also call the insurance provider if we need to, we also</p> <p>24 let them know as well and sometimes even ACHA, the state</p> <p>25 will get involved too if need be.</p>	<p style="text-align: right;">Page 53</p> <p>1 will call them and many times there will be case</p> <p>2 managers involved for the, you know, that represent the</p> <p>3 insurance company.</p> <p>4 So, we call the case manager and we'll speak</p> <p>5 to the case manager and many times, you know, just by</p> <p>6 calling the case manager, we'll get that resolved and</p> <p>7 once that we get an authorization that insurance company</p> <p>8 says we're going to pay you, we definitely pay the</p> <p>9 caregiver --</p> <p>10 Q Okay.</p> <p>11 A -- because that money belongs to caregiver.</p> <p>12 Q Do caregivers -- are caregivers informed that</p> <p>13 they may have to sue the insurance company for their</p> <p>14 opinion?</p> <p>15 A No, they don't really have to -- they don't</p> <p>16 have to sue the insurance company because the insurance</p> <p>17 company will send the agency an authorization, you see.</p> <p>18 So, once the agency has an authorization, the</p> <p>19 agency can actually take that on with the insurance</p> <p>20 company as long as we have an authorization.</p> <p>21 Q And the authorization is that essentially a</p> <p>22 contract?</p> <p>23 A It's part of the contract.</p> <p>24 Q Okay. But the authorization is approving the</p> <p>25 amount of time and the type of service that the</p>

<p style="text-align: right;">Page 54</p> <p>1 caregiver can give to the client?</p> <p>2 A That is correct.</p> <p>3 Q And so that's something that All VIP can</p> <p>4 always wave back in front of the insured and say, okay,</p> <p>5 this is what you authorize, this is what it was</p> <p>6 provided, therefore provided this payment to the</p> <p>7 caregiver.</p> <p>8 A That is correct and that's what the</p> <p>9 authorization is all about, it's to ensure payment.</p> <p>10 Q Now, does the authorization ensure payment</p> <p>11 only to the caregiver or also to All VIP?</p> <p>12 A It's also to All VIP Care plus the caregiver.</p> <p>13 Q When patients are making payment for caregiver</p> <p>14 service, are they writing two separate checks, one for</p> <p>15 the caregiver and one for All VIP?</p> <p>16 A No, because like I mentioned in the beginning,</p> <p>17 patients don't want to do that, it's too messy for them.</p> <p>18 Especially when -- remember that -- please</p> <p>19 keep in mind that our clients were predominantly</p> <p>20 seniors, they're 80, they are 90 years old, they do not</p> <p>21 want to be involved with that.</p> <p>22 Q And so I understand what you're saying, they</p> <p>23 don't want to be involved with the payment, but if they</p> <p>24 are paying, then they have to be paying somehow.</p> <p>25 So, what happens to their payment, how does it</p>	<p style="text-align: right;">Page 56</p> <p>1 A No, they don't have to give us any payment,</p> <p>2 they will just be -- they'll just be getting --</p> <p>3 hopefully, they'll just be getting their share, but if a</p> <p>4 client gives him a check that includes our fee then,</p> <p>5 yes, they have to bring the check over to the office.</p> <p>6 Q Understood. Okay. As far as you know, is</p> <p>7 there any allegation that Cruz Valdivieso kept any money</p> <p>8 that was supposed to go to All VIP?</p> <p>9 A No. I do know that she was getting paid. It's</p> <p>10 my understanding that the clients were paying her</p> <p>11 privately as well which is against the contract that she</p> <p>12 signed, but in any case, in any event, you know, the</p> <p>13 clients liked her, they were happy with her. That I</p> <p>14 guess --</p> <p>15 Q Yeah. Sorry. Go ahead.</p> <p>16 A I guess that's what matters, you know, they</p> <p>17 were happy and services as far as I was concerned with,</p> <p>18 you know, they were being provided and that's what's</p> <p>19 important, you know, at the end of the day.</p> <p>20 Q Right. When you say Ms. Valdivieso was being</p> <p>21 paid privately by the clients, what do you mean?</p> <p>22 A The client that were using her for extra</p> <p>23 hours, they were utilizing the services beyond what the</p> <p>24 insurance company authorized.</p> <p>25 So she, I guess had this agreement with the</p>
<p style="text-align: right;">Page 55</p> <p>1 get split up and the portion for the caregiver gets sent</p> <p>2 out to the caregiver, does All VIP taken all the money</p> <p>3 and then cuts a check to the caregiver as a 1099</p> <p>4 payment?</p> <p>5 A Normally, okay, we bill the client, the client</p> <p>6 sends us a check for everything. For our fee, plus the</p> <p>7 caregivers rate and then we cut a check to the</p> <p>8 caregiver.</p> <p>9 There are times where the client can pay the</p> <p>10 caregiver directly and that has happened, but it's not</p> <p>11 very often that happens and then they will just pay the</p> <p>12 caregiver directly and then they will send us whatever</p> <p>13 they need to send the agency, but that doesn't happen</p> <p>14 very often, clients do not want to engage with that,</p> <p>15 they just don't.</p> <p>16 Q Are there ever a situations where a client</p> <p>17 will give the caregiver the money for the caregiver</p> <p>18 services and All VIPs fees?</p> <p>19 A Yes, but it's very rare.</p> <p>20 Q Okay.</p> <p>21 A Very rare. Can it happen? Of course, but</p> <p>22 it's very rare.</p> <p>23 Q And then in that situation, the caregiver is</p> <p>24 now responsible for taking the payment back to All VIP,</p> <p>25 to wherever their home office is?</p>	<p style="text-align: right;">Page 57</p> <p>1 family where she was working extra hours in the family,</p> <p>2 we're paying her directly.</p> <p>3 Again, you know, it's against the contract,</p> <p>4 but, you know, like I said, clients were happy and we</p> <p>5 just left it at that.</p> <p>6 Q Okay. Now the clients that you're referring</p> <p>7 to were Ms. Cruz was working extra hours, is this one</p> <p>8 particular client or was this more than one client that</p> <p>9 All VIP assigned Ms. Cruz to?</p> <p>10 A I think she had like three if I recall when I</p> <p>11 was -- when I was looking into her case and what took</p> <p>12 place. I believe she had three clients.</p> <p>13 Q That she was working on authorized hours for?</p> <p>14 A No, just two because I believe there were a</p> <p>15 couple if I'm correct, it was a couple and I believe</p> <p>16 they were two.</p> <p>17 Q Okay. And you're saying that the couple, each</p> <p>18 were individual patients for All VIP?</p> <p>19 A That's correct. They each had their</p> <p>20 authorization through Medicaid.</p> <p>21 Q And I think in your previous statement, what</p> <p>22 you were attempting to say was that All VIP had only</p> <p>23 assigned Ms. Cruz Valdivieso to three client's total?</p> <p>24 A No, it's the -- well, it's not that just only.</p> <p>25 When I was involved with her situation here at the</p>

<p style="text-align: right;">Page 58</p> <p>1 office, I noticed she had three.</p> <p>2 She could have been -- she could have been</p> <p>3 assigned to more, but it all depends, because she's</p> <p>4 working 50, 60 hours a week, I mean, there's just so</p> <p>5 many clients that you can have in one week.</p> <p>6 <b>Q Okay. Understood. Is All VIP claiming that</b></p> <p>7 <b>Ms. Cruz Valdivieso was stealing time while she was</b></p> <p>8 <b>working for All VIP?</b></p> <p>9 A I wouldn't say she was stealing time. I'm just</p> <p>10 going to say that she, you know, she ignore her</p> <p>11 contract. She's not supposed to be working privately</p> <p>12 for our clients.</p> <p>13 When you refer an independent contractor to</p> <p>14 the clients, they're not supposed to be working</p> <p>15 privately for the client with our knowledge and that's</p> <p>16 what she did.</p> <p>17 <b>Q Is that essentially like moonlighting?</b></p> <p>18 A No. That's -- no, that's not moonlighting.</p> <p>19 <b>Q Okay. So when you say working privately for</b></p> <p>20 <b>the clients, that means specifically that she's working</b></p> <p>21 <b>hours that were not authorized by the insurance company?</b></p> <p>22 A Not authorized by the insurance company, but</p> <p>23 not -- but it is also a contract where it specifically</p> <p>24 states that you're not allowed to do that because in</p> <p>25 essence she's, you know, she's -- they are just not</p>	<p style="text-align: right;">Page 60</p> <p>1 A I was, you know, I just said look, you know,</p> <p>2 the client is happy, so let's just, let it be, you know.</p> <p>3 <b>Q At any point, did you become aware that the</b></p> <p>4 <b>clients themselves were making complaints against All</b></p> <p>5 <b>VIP?</b></p> <p>6 A No, the only time I spoke -- perhaps I spoke</p> <p>7 to one of them, maybe a daughter or something was when</p> <p>8 she was calling it to discuss her pay or something, but</p> <p>9 why would there be any complains when they were happy</p> <p>10 with the caregiver, when they had her working extra</p> <p>11 hours be on the Medicare authorization.</p> <p>12 No, there is no complaint, it makes absolutely</p> <p>13 no sense.</p> <p>14 <b>Q At any point did you become aware that</b></p> <p>15 <b>Ms. Cruz was making complaints against All VIP about her</b></p> <p>16 <b>payment?</b></p> <p>17 A Yes, that we --</p> <p>18 <b>Q Okay.</b></p> <p>19 A And that only with this client, but with</p> <p>20 another client.</p> <p>21 <b>Q Okay. So, let me just pull up a couple of</b></p> <p>22 <b>documents so we can be -- we can make sure we're talking</b></p> <p>23 <b>about the same clients.</b></p> <p>24 <b>Okay. I'm now going to show you what I'm</b></p> <p>25 <b>marking as Exhibit C for the deposition record.</b></p>
<p style="text-align: right;">Page 59</p> <p>1 allowed to do that. It goes against the values, it goes</p> <p>2 against the contract, it goes against the business</p> <p>3 model, you're not allowed to be working for the client</p> <p>4 without the agency being aware of it and that's what she</p> <p>5 was told.</p> <p>6 <b>Q Okay. How did the agency become aware or how</b></p> <p>7 <b>did All VIP become aware that Ms. Valdivieso was</b></p> <p>8 <b>providing hours without authorization?</b></p> <p>9 A I became aware to Diana Ramirez, she brought</p> <p>10 it to my attention.</p> <p>11 <b>Q What did Ms. Ramirez tell you?</b></p> <p>12 A She was working privately for the clients.</p> <p>13 <b>Q Okay. And do you know how Ms. Ramirez found</b></p> <p>14 <b>that information out?</b></p> <p>15 A No, I don't, but I, you know, I mean, I hate</p> <p>16 to assume, but I -- probably, you know, in general when</p> <p>17 we find out these things, usually because there was an</p> <p>18 issue, you know, so there was an issue and when she</p> <p>19 delved into it, that's when she discovered, but again,</p> <p>20 that's something that perhaps she should answer so that</p> <p>21 we can be accurate.</p> <p>22 <b>Q Okay. But when you found out -- when</b></p> <p>23 <b>Ms. Ramirez told you that there was an issue with</b></p> <p>24 <b>Ms. Cruz providing an authorized hours, what was your</b></p> <p>25 <b>response?</b></p>	<p style="text-align: right;">Page 61</p> <p>1 (Thereupon, Plaintiff's Exhibit C was entered</p> <p>2 into the record.)</p> <p>3 BY MR. CUMMINGS:</p> <p>4 <b>Q Do you recognize the document that I'm showing</b></p> <p>5 <b>you on your screen Ms. McKinnon?</b></p> <p>6 A Yes.</p> <p>7 <b>Q Okay. And how do you recognize this document?</b></p> <p>8 A Because I believe I'm the one that responded</p> <p>9 to it and I saw it and that's not, you know, the client</p> <p>10 did not do that, that was a family member and this came</p> <p>11 because of Cruz and the reason why I said it's not true</p> <p>12 is because the client never call here to complain about</p> <p>13 services.</p> <p>14 <b>Q Okay. How did you become aware of this Google</b></p> <p>15 <b>post being -- well, first, where did you see this Google</b></p> <p>16 <b>post?</b></p> <p>17 A I saw it online in Google's review.</p> <p>18 <b>Q Okay. Do you regularly monitor the Google</b></p> <p>19 <b>reviews for All VIP?</b></p> <p>20 A Sometimes I do, sometimes. Not always because</p> <p>21 our record speaks for itself. We have lots of client's,</p> <p>22 lots of great reviews, so, you know, I -- but sometimes</p> <p>23 I do because I want to make sure, you know, that my</p> <p>24 staff is doing their job. That's why I do it mostly, to</p> <p>25 make sure that my staff, in house staff that they're</p>

<p style="text-align: right;">Page 62</p> <p>1 doing their jobs.</p> <p>2 <b>Q Did anybody direct you to look at this</b></p> <p>3 <b>particular Google posts or you just --</b></p> <p>4 A You know, I don't recall. I'm sorry. I have</p> <p>5 way -- I have hundreds of clients, hundreds of</p> <p>6 caregivers. This is a very busy business. So no, I</p> <p>7 don't recall. I don't.</p> <p>8 <b>Q Now looking at the name of the person who, you</b></p> <p>9 <b>know, the review is under, where it says Cesar ZK, was</b></p> <p>10 <b>Cesar ZK an All VIP client?</b></p> <p>11 A I believe he -- I believe, yes and he did not</p> <p>12 write that review.</p> <p>13 <b>Q Okay. How do you know?</b></p> <p>14 A Because I know. He's a senior, he's not going</p> <p>15 to do that. It wasn't him.</p> <p>16 <b>Q Okay. But did you ever receive any</b></p> <p>17 <b>information that somebody else wrote this review or you</b></p> <p>18 <b>just assume --</b></p> <p>19 A I don't recall receiving any information. I</p> <p>20 don't. We can ask Diana Ramirez, but I just don't</p> <p>21 recall.</p> <p>22 <b>Q Okay. And so whether he wrote the review in</b></p> <p>23 <b>that or if it was a family member or somebody else,</b></p> <p>24 <b>looking at the content of it, it says that HHAs home</b></p> <p>25 <b>health aides were always complaining they were not being</b></p>	<p style="text-align: right;">Page 64</p> <p>1 or whatever and again, you know, I explained to her,</p> <p>2 Cruz we have a system in place to avoid these issues,</p> <p>3 please utilize the software, utilize the resources, you</p> <p>4 know, that you have, you know. Use HHAExchange to clock</p> <p>5 in, clock out. That goes automatically to the payroll</p> <p>6 and you won't have these issues.</p> <p>7 <b>Q When you spoke with Ms. Cruz Valdivieso, did</b></p> <p>8 <b>you speak to her in English or Spanish?</b></p> <p>9 A Spanish.</p> <p>10 <b>Q Okay. So, are you --</b></p> <p>11 A I think it was Spanish.</p> <p>12 <b>Q Okay. Are you a fluent Spanish speaker?</b></p> <p>13 A --</p> <p>14 <b>Q Okay. Well, just for the deposition record</b></p> <p>15 <b>you have to actually say yes, so.</b></p> <p>16 A Yes.</p> <p>17 <b>Q Okay. Thank you. And do you also read in</b></p> <p>18 <b>Spanish?</b></p> <p>19 A I do read Spanish.</p> <p>20 <b>Q Do you write in Spanish?</b></p> <p>21 A A little.</p> <p>22 <b>Q Does All VIP provide any Spanish language</b></p> <p>23 <b>documents to its caregivers?</b></p> <p>24 A No, because it is not my responsibility to do</p> <p>25 so, but they can and they have in the office if a</p>
<p style="text-align: right;">Page 63</p> <p>1 paid by the agency and threatened into stop delivering</p> <p>2 services to the customer, patient.</p> <p>3 <b>What is -- do you have any idea of what Mr. ZK</b></p> <p>4 <b>or the post is referring to there?</b></p> <p>5 A First of all, Mr. ZK did not write that post</p> <p>6 and second of all, it's referring to the caregiver</p> <p>7 complaining to the clients order that she was not paid,</p> <p>8 which it's -- that's what she was doing.</p> <p>9 <b>Q Okay. And in this particular case, the</b></p> <p>10 <b>caregiver would have been Ms. Cruz?</b></p> <p>11 A That's correct.</p> <p>12 <b>Q All right. Do you know why Ms. Cruz was</b></p> <p>13 <b>complaining that she was not being paid?</b></p> <p>14 A No.</p> <p>15 <b>Q However, Ms. Cruz did come to the Palm Beach</b></p> <p>16 <b>office one time and complained to you that she was not</b></p> <p>17 <b>being paid, correct?</b></p> <p>18 A That is correct, maybe once or twice.</p> <p>19 <b>Q Okay. And what was her specific complaint</b></p> <p>20 <b>when she came into the Palm Beach office about not being</b></p> <p>21 <b>paid?</b></p> <p>22 A That she didn't get paid or she didn't get</p> <p>23 paid correctly. It was some -- again, I have over 1000</p> <p>24 caregivers, you know, on my roster.</p> <p>25 So, something about her not getting paid right</p>	<p style="text-align: right;">Page 65</p> <p>1 caregiver will request they'll do it, you know, out of</p> <p>2 the kindness, you know, of our heart, you know.</p> <p>3 Sure. We're compassionate, we'll do it, but</p> <p>4 normally, no and we're not -- we're not mandated to do</p> <p>5 so.</p> <p>6 <b>Q The independent contractor agreement that home</b></p> <p>7 <b>health aide sign, is that an English or Spanish?</b></p> <p>8 A Absolutely. And its in English this is the</p> <p>9 US, it is in English.</p> <p>10 <b>Q Do you know if Cruz Valdivieso ever informed</b></p> <p>11 <b>any All VIP employee that she did not understand the</b></p> <p>12 <b>independent contractor agreement?</b></p> <p>13 A No, she did not and when they have issue, if</p> <p>14 they have an issue, we have bilingual staff here. Okay,</p> <p>15 bilingual.</p> <p>16 They will go into the conference room with</p> <p>17 them and they will walk through the application with the</p> <p>18 caregiver, but it is in English because that's the</p> <p>19 requirement, English.</p> <p>20 <b>Q The bilingual staff that you mentioned that</b></p> <p>21 <b>we'll go through documents, All VIP documents with</b></p> <p>22 <b>caregivers, are they only in Palm Beach or are they in</b></p> <p>23 <b>all of the offices?</b></p> <p>24 A They are in Palm Beach, they are in Deerfield</p> <p>25 Beach, they are in Pahokee.</p>

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1 Q When home health aides sign up to work for All  
2 VIP, do they fill out the application online or do they  
3 fill out the application in the office?  
4 A They could fill it out online and sometimes we  
5 do that to make things easier for them because, you  
6 know, if they don't work they don't get paid.  
7 So, you know, just to make things easier for  
8 them, but mostly they come to the office because we need  
9 to meet you. We need to know who are we referring to a  
10 client's home. These seniors are depending on us. So,  
11 and we need to make that connection with the caregivers.  
12 We need to make sure that they represent. So,  
13 we need to you know --  
14 Q Okay.  
15 A So, they normally come to the office and  
16 apply.  
17 Q Got it. And are caregivers told to come to  
18 the Palm Beach office for employment, like onboarding or  
19 they can go to any office?  
20 A They can go to any office they like.  
21 Q Okay. Do you know how Ms. Cruz Valdivieso  
22 turned in her application for employment with All VIP?  
23 A No, I don't. I'm sorry.  
24 (Thereupon, a short discussion was held off  
25 record.)

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1 (Deposition resumed.)  
2 BY MR. CUMMINGS:  
3 Q All right. So Ms. McKinnon, when we left off  
4 we were talking about Google post that I was showing you  
5 an Exhibit C and --  
6 A Yes.  
7 Q -- we were also talking about caregivers and  
8 certain documents that they have to sign. So, let me  
9 just show you some of the documents that I have.  
10 A Yes.  
11 Q I'm going to make this Exhibit D for the  
12 deposition record, so.  
13 (Thereupon, Plaintiff's Exhibit D was entered  
14 into the record.)  
15 BY MR. CUMMINGS:  
16 Q Okay. Now what I'm showing you is a 25 page  
17 PDF document --  
18 A Okay.  
19 Q -- All VIP provided to us --  
20 A Okay.  
21 Q And based on what I'm scrolling through here,  
22 starting at Page 1, do you recognize what types of  
23 documents these are?  
24 A Yes.  
25 Q Okay. What types of documents are this that

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1 I'm showing --  
2 A That's the application when I first come here  
3 to apply.  
4 Q Okay. Is this applications specifically for  
5 home health aides?  
6 A Home health aides, CNAs, LPNs, RNs.  
7 Q And they're all required to fill out these  
8 forms that I'm showing you in Exhibit D here?  
9 A According to my attorney, they are. When we  
10 first help with the business, that's what he said.  
11 Q Okay. And as we -- as you mentioned earlier,  
12 this document is only provided in English, correct?  
13 A That is correct.  
14 Q Or these documents I should say. All right.  
15 A Only in English.  
16 Q Okay. Now on the bottom of Page 15 of 25,  
17 which has Bates Stamp Number, All VIP 26A150000150 --  
18 A Yes.  
19 Q -- Under signature or above signature of  
20 authorized company representative, who is your Yanaris  
21 or Yanaris Perez?  
22 A She used to work here in the Broward office  
23 with Diana.  
24 Q Okay. And what was her title?  
25 A She would help -- she would be Diana Ramirez

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1 assistant, help her run that office.  
2 Q Why is Ms. Perez's name on the -- on  
3 Ms. Cruz's sign on documents?  
4 A Because she processed her when she first came  
5 in. That's the only reason she would have to process  
6 her.  
7 When Ms. Cruz came -- arrived to the office  
8 I'm assuming in Deerfield Beach because that's where she  
9 worked, she processed her, she interview her, she gave  
10 me the application and by the way, Ms. Perez is  
11 bilingual in English and Spanish and she parts of the  
12 application, so she signs it.  
13 Q Okay. Got it. And when -- so when you say  
14 process, process basically means that Ms. Perez carried  
15 out the interview process for Cruz Valdivieso?  
16 A That's correct. Yes.  
17 Q Okay. And going down to Appendix A, which  
18 is page 16 of the document that I'm showing you in  
19 Exhibit D --  
20 A Yes.  
21 Q -- what exactly is this independent contractor  
22 payment schedule telling the potential or the new  
23 employee?  
24 A That there -- this, you know, because we  
25 negotiate sa -- rates. So, that's what they're supposed

<p style="text-align: right;">Page 70</p> <p>1 to when the salaries negotiated, they put there, it's</p> <p>2 written and they really -- she should have -- Ms. Perez</p> <p>3 should have put that a price, you know, whatever they</p> <p>4 negotiate it, it should have been put there.</p> <p>5 With Medicare we really can't negotiate much</p> <p>6 because Medicare doesn't negotiate.</p> <p>7 <b>Q Okay.</b></p> <p>8 A So, you know.</p> <p>9 <b>Q And so -- sorry. So, in this particular</b></p> <p>10 <b>situation with Cruz Valdivieso, if she was negotiating</b></p> <p>11 <b>the price, where would that number be, would it be next</b></p> <p>12 <b>to HHA/CNA at the bottom?</b></p> <p>13 A That is correct. That's exactly where it</p> <p>14 should have been put right there.</p> <p>15 <b>Q Okay. And if this document is blank, then</b></p> <p>16 <b>does that mean that Ms. Valdivieso was not working under</b></p> <p>17 <b>a specific rate of pay that she was supposed to be</b></p> <p>18 <b>receiving?</b></p> <p>19 A You know, it's hard for me to tell because I</p> <p>20 wasn't there and I don't know what Ms. Perez was</p> <p>21 thinking, but as a manager and someone who runs the</p> <p>22 office, this tells me that that Ms. Perez didn't follow</p> <p>23 through, maybe she was being human that day she forgot</p> <p>24 or maybe her and Cruz didn't come to agreement. I don't</p> <p>25 know, but was supposed to put a rate, was support to put</p>	<p style="text-align: right;">Page 72</p> <p>1 <b>Q Okay.</b></p> <p>2 A That's normally the process.</p> <p>3 <b>Q Does All VIP know if you Yanaris Perez explain</b></p> <p>4 <b>the independent contractor agreement to Cruz Valdivieso</b></p> <p>5 <b>in Spanish?</b></p> <p>6 A I'm going to say, yes, because Ms. Cruz always</p> <p>7 spoke to us in Spanish.</p> <p>8 <b>Q This document that I'm looking at on Page 24</b></p> <p>9 <b>of 25, which has Bates Stamps Number 24, where -- this</b></p> <p>10 <b>says, "Waiver of professional liability insurance." Does</b></p> <p>11 <b>this tell you that Ms. Cruz Valdivieso was waiving the</b></p> <p>12 <b>professional liability insurance or that she was not?</b></p> <p>13 A What this tells me is that me as a company, I</p> <p>14 will be safe. This tells me whether Ms. Cruz has</p> <p>15 insurance or not. This saves All VIP Care. That's what</p> <p>16 this document tells me because many times, you know,</p> <p>17 they buy the professional liability and they forget to</p> <p>18 renew their professional liability.</p> <p>19 So, this document just tells me that as a</p> <p>20 company, as a business I am safe.</p> <p>21 <b>Q Okay. Meaning that if the home health aide,</b></p> <p>22 <b>in this case Ms. Cruz does not have professional</b></p> <p>23 <b>liability insurance, that she's agreeing not to sue All</b></p> <p>24 <b>VIP if she gets sued?</b></p> <p>25 A If Ms. Cruz neglect to renew her policy, this</p>
<p style="text-align: right;">Page 71</p> <p>1 something there whether it's a question mark. Many times</p> <p>2 when I would do this, I will put \$10 to \$15, you know, I</p> <p>3 always put something.</p> <p>4 So, that I can only tell you what I can, you</p> <p>5 know, what they supposed to really be doing and why did</p> <p>6 she leave it blank? I don't know. I wasn't there. I</p> <p>7 wasn't privy to that. I didn't privy between her and</p> <p>8 Ms. Cruz, but was supposed to put something there. We're</p> <p>9 not supposed to leave it blank.</p> <p>10 <b>Q Okay. Would Ms. Valdivieso start date be</b></p> <p>11 <b>considered the date that she signed these documents?</b></p> <p>12 A No. But, you know, that's the day that pretty</p> <p>13 that, you know, that she should, that she can definitely</p> <p>14 start, but sometimes they start before, it all depends</p> <p>15 on the client. Sometimes the client brings them on, you</p> <p>16 know, and sometimes they come from other agencies.</p> <p>17 So, we don't want to interrupt services, so we</p> <p>18 let them, you know, work before signing the contract,</p> <p>19 but normally, they're supposed to come and fill out the</p> <p>20 application and we talk to them.</p> <p>21 We go over the duty, the client. You know,</p> <p>22 "Can you accept this assignment?" Yes or no? You know,</p> <p>23 we go over everything and then we put them and then we</p> <p>24 send them over to meet the client and then they begin</p> <p>25 work.</p>	<p style="text-align: right;">Page 73</p> <p>1 tells everyone that she should not be suing me.</p> <p>2 <b>Q Okay. And are home health aides or let me put</b></p> <p>3 <b>it like this. When people sign on to work with All VIP,</b></p> <p>4 <b>are they required to fill out this waiver of</b></p> <p>5 <b>professional liability insurance document?</b></p> <p>6 A They don't have to. They don't have to sign</p> <p>7 anything, but if they, you know.</p> <p>8 <b>Q Go ahead.</b></p> <p>9 A If for example, she says I do not want to sign</p> <p>10 a waiver of professional liability insurance, then we</p> <p>11 tell her, well, then you must have, otherwise we cannot</p> <p>12 put you on our roster and --</p> <p>13 <b>Q Got it.</b></p> <p>14 A -- send and give you job sites.</p> <p>15 <b>Q Okay. Understood. And then the last page in</b></p> <p>16 <b>this Exhibit D is the independent contractor</b></p> <p>17 <b>professional liability policy.</b></p> <p>18 <b>Does this document indicate to you that</b></p> <p>19 <b>Ms. Cruz did have professional liability insurance?</b></p> <p>20 A No, this document tells me that she's been</p> <p>21 notified.</p> <p>22 <b>Q Just as she's been notified that she should</b></p> <p>23 <b>have.</b></p> <p>24 A That is correct. That she should have it and</p> <p>25 that she needs to have it. It's the best thing to do.</p>

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1 It's good business practice.

2 **Q Is there any document that tells All VIP that**

3 **Ms. Cruz in fact did have professional liability**

4 **insurance while she was working with All VIP?**

5 A I don't know because again, you know, she's in

6 a different office. So, that would be a good question

7 for Diana Ramirez and it'd be a very good question for

8 her.

9 **Q Got it. Is there any document within these 25**

10 **pages of Exhibit D that explains how much Ms. Valdivieso**

11 **Cruz was actually being paid when she was a home health**

12 **aide?**

13 A I will tell you that this document I did not

14 see that. However, I will tell you that I spoke to her

15 about that because if she negotiated her rate, yes, she

16 did.

17 She was asking for much more than what we

18 normally pay someone at that time working for Medicaid.

19 So, she got more than what she was supposed to get and

20 that I opposed.

21 **Q Who did she -- who did Ms. Valdivieso Cruz**

22 **negotiate her rate with?**

23 A With me and she told the office in Deerfield

24 Beach and it was brought to my attention.

25 **Q Let me just bring that down for a second. So,**

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1 **did she negotiated her rate with you before she was**

2 **actually brought on to be a home health aide with All**

3 **VIP?**

4 A I don't recall, I just remember. The rate was

5 negotiated.

6 **Q How much did she negotiate her rate for?**

7 A 13 an hour at that time. At that time, she

8 negotiate 13 an hour. You have to understand that at

9 that time -- and I'm just giving you extra information

10 here --

11 **Q Right.**

12 A -- The reimbursement for Medicaid and you

13 cannot negotiate Medicaid, negotiate with Medicare,

14 okay, was only \$16 an hour and we negotiated with her 13

15 an hour.

16 **Q Okay. Which mean -- which then meant that for**

17 **every hour service that Ms. Cruz worked, that All VIP**

18 **was only receiving \$3 an hour?**

19 A That is correct.

20 **Q What is the normal rate at home health aides**

21 **working with Medicaid charge or negotiate?**

22 A Back then and again, it depends, like Miami

23 for instance, they might get minimum wage or they might

24 get \$9.

25 Normally in my area, Broward maybe 10 an hour,

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1 West Palm Beach a little bit more, it all depends.

2 **Q Why did All VIP negotiate \$13 an hour with**

3 **Ms. Cruz in particular?**

4 A Because as independent contractor, she has

5 that right and she requested it. She said she wasn't

6 going to work for less. So, we negotiated a rate with

7 her.

8 **Q Was there any consideration made into her**

9 **previous experience?**

10 A No because Medicaid doesn't take that into

11 account.

12 **Q Okay. Did you know who Ms. Cruz Valdivieso**

13 **was before she started working with All VIP?**

14 A No.

15 **Q Do you know if All VIP received a**

16 **recommendation to hire Ms. Cruz Valdivieso, does she**

17 **come under any special, with any special**

18 **recommendations?**

19 A I don't, but then Diana Ramirez she knows more

20 about this case then I do.

21 **Q Don't know. Okay. Are All VIP employees**

22 **required to wear a uniform when they provide care in the**

23 **house?**

24 A As an independent contractor, they are not

25 require to wear uniforms. However, if the client

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1 requires them to wear uniform, the answer is yes.

2 **Q So, sometimes clients require the home health**

3 **aides to wear a uniform in their house?**

4 A Absolutely. And sometimes the clients do not

5 want them wearing uniform.

6 **Q And for that reason does All VIP have some**

7 **type of uniform that home health aides can use?**

8 A If the client wants to wear uniform, we tell

9 the caregivers to, you know, just buy the regular scrubs

10 that the Walmart sells, you know.

11 **Q Okay. Is there any clothing that All VIP has**

12 **that has its logo or name on it?**

13 A We do, but for in-house. We don't have that

14 for our caregivers. The independent contractors, no.

15 **Q Who sets the schedule for the caregivers?**

16 A That -- the schedule is set between two people

17 in this case and I'm going to be specific with this

18 case --

19 **Q Okay.**

20 A -- With this case, it's Humana, Humana Long

21 Term Care. The case manager will meet with the client

22 and family members.

23 They do what we call an assessment, a care

24 plan. They are the ones that schedule the schedule. So,

25 I'm going to say the case manager and the family or the

<p style="text-align: right;">Page 78</p> <p>1 client, they are the ones that came up with the</p> <p>2 schedule, not All VIP Care. Case management and Humana</p> <p>3 and the family, the client.</p> <p>4 <b>Q Got it. Okay. And how was their schedule</b></p> <p>5 <b>then given to All VIP?</b></p> <p>6 A Humana would then send it an authorization and</p> <p>7 they'll call us up and then we'll do an intake and</p> <p>8 they'll tell us exactly what they want and now because</p> <p>9 of HHAExchange, will be in the computer.</p> <p>10 <b>Q Okay. So, generally speaking or let's just</b></p> <p>11 <b>talk, like you said, let's talk about Cruz Valdivieso.</b></p> <p>12 <b>When you say Humana, which client had Humana, was it ZK</b></p> <p>13 <b>case?</b></p> <p>14 A Let's see real quick here. He had Humana,</p> <p>15 yes. Well, he has Humana, yes.</p> <p>16 <b>Q Mr. ZK had Humana. Okay. And you previously</b></p> <p>17 <b>mentioned that there was a couple, was it the ZK that</b></p> <p>18 <b>were a couple or was this a different --</b></p> <p>19 A I believe so --</p> <p>20 <b>Q Okay.</b></p> <p>21 A -- they're the only ones that come to mind. At</p> <p>22 this moment, they were a couple.</p> <p>23 <b>Q And so would Humana have met with -- Humana</b></p> <p>24 <b>case manager had met with the ZKs prior to any All VIP</b></p> <p>25 <b>involvement with the ZKs?</b></p>	<p style="text-align: right;">Page 80</p> <p>1 <b>Q Does Humana get involved at all with the</b></p> <p>2 <b>payment or the hourly rate that the home health aide is</b></p> <p>3 <b>being paid?</b></p> <p>4 A No, because Medicaid does not negotiate rate.</p> <p>5 They're going to pay you what they're going to pay you</p> <p>6 and you take it or not.</p> <p>7 <b>Q Got it. So, even though this is a Humana</b></p> <p>8 <b>plan, it's still being paid out by Medicaid?</b></p> <p>9 A That is correct.</p> <p>10 <b>Q Okay. In the case of Ms. Cruz Valdivieso, did</b></p> <p>11 <b>All VIP ever have to make contact with Humana?</b></p> <p>12 (Thereupon, a short discussion was held off</p> <p>13 record.)</p> <p>14 (Deposition resumed.)</p> <p>15 BY MR. CUMMINGS:</p> <p>16 <b>Q So, yeah. So, Ms. McKinnon, I believe the</b></p> <p>17 <b>question I was in the middle of asking you was, once</b></p> <p>18 <b>Humana and the client come up with the schedule, how is</b></p> <p>19 <b>that scheduled then relayed over to the home health</b></p> <p>20 <b>aide?</b></p> <p>21 A We call the aide and we tell them exactly what</p> <p>22 the client needs. We have a form, you know, client, you</p> <p>23 know, the schedule is Monday through Friday from 09:00</p> <p>24 to 05:00, you know, client need bathing, dressing, meal</p> <p>25 preparation, medication reminders, you know, are you</p>
<p style="text-align: right;">Page 79</p> <p>1 A Yes. They are supposed to, yes. That's the</p> <p>2 norm.</p> <p>3 <b>Q And then the Humana case manager sends over a</b></p> <p>4 <b>schedule and an authorization and at that point All VIP</b></p> <p>5 <b>has to find the caregiver. Is that correct?</b></p> <p>6 A That is correct. Sometimes the clients bring</p> <p>7 their caregivers and I don't know if that happened in</p> <p>8 this case, I don't recall, but there'll be a good</p> <p>9 question for Diana Ramirez. She would know.</p> <p>10 <b>Q Got it. Okay. And then does Humana have to</b></p> <p>11 <b>approve the caregiver after the authorization is given?</b></p> <p>12 A No.</p> <p>13 <b>Q No.</b></p> <p>14 A No.</p> <p>15 <b>Q Okay. That's really just up to All VIP to</b></p> <p>16 <b>decide who the caregiver would be based on the hours</b></p> <p>17 <b>that are available and the service that needs to be</b></p> <p>18 <b>provided?</b></p> <p>19 A Well, the caregiver has to meet federal and</p> <p>20 state regulations. So, you know --</p> <p>21 <b>Q Right.</b></p> <p>22 A -- Humana trusted us, I mean, I have a</p> <p>23 contract with Humana where I'm going to follow State and</p> <p>24 Federal regulations. So, they trusted me that I'm going</p> <p>25 to do my job.</p>	<p style="text-align: right;">Page 81</p> <p>1 willing to do this?</p> <p>2 Sometimes, you know, client needs -- client</p> <p>3 and aide is willing to walk the dog, "Are you willing to</p> <p>4 do this?" Whatever it is and so, the aide will say yes</p> <p>5 or no and then at that point that we send -- we call up</p> <p>6 the client and we tell the client, "We find aide whose</p> <p>7 accepting your case, would you like to interview or</p> <p>8 should we just send her to start the case?"</p> <p>9 <b>Q Okay. All right. So, now let me show you</b></p> <p>10 <b>what I'm going to mark as Exhibit E for the deposition</b></p> <p>11 <b>record.</b></p> <p>12 (Thereupon, Plaintiff's Exhibit E was entered</p> <p>13 into the record.)</p> <p>14 A Okay.</p> <p>15 BY MR. CUMMINGS:</p> <p>16 <b>Q Okay. Can you see the document that I'm</b></p> <p>17 <b>showing you on the screen right now?</b></p> <p>18 A Oh, yes.</p> <p>19 <b>Q All right. This is an eight page document.</b></p> <p>20 A Okay.</p> <p>21 <b>Q It also has Bate stamps numbers, it just says</b></p> <p>22 <b>VIP docs 155 I believe, all the way down to 162. I'll</b></p> <p>23 <b>just go back to the first page and first, do you</b></p> <p>24 <b>recognize this document?</b></p> <p>25 A Of course.</p>

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1 Q Okay. How do you recognize it?

2 A Because it's HHAEExchange, it's what we use

3 every day.

4 Q And you already explained what HHAEExchange is-

5 -

6 A The home care software.

7 Q Right. Exactly. You already explained that.

8 In this particular case we can see that the patient name

9 here is a ZK C -- Cesar ZK.

10 We see a coordinator is Diana Ramirez and then

11 when we look down on the schedule on this first pages

12 patient calendar, we can see that Friday, Saturday and

13 Sunday are blocked off and they have Ms. Valdivieso

14 Cruz's name. So, how would Ms. Valdivieso Cruz access

15 this calendar?

16 A Through her smartphone. I also think it's

17 important to mention that what you see on the screen,

18 that information you see there is predominantly put in

19 there by Humana, the insurance company.

20 Q And so the insurance company is regularly

21 updating the schedule that the patient is going to be

22 receiving care on?

23 A They don't update the schedule. What they

24 update in there is the authorization --

25 Q Okay.

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1 A -- and the duties, the hours that we're going

2 to perform each duties per week.

3 Q And so the times that are on the schedule,

4 those -- in the green boxes those are being inputted by

5 a Humana employee as far as you know?

6 A Yes. Oh, I know.

7 Q Okay. If those hours are definitely not being

8 inputted by All VIP employee?

9 A The only thing we put in is down there what

10 you see in green, that H name, you know, the hours that

11 she's working, that is inputted by All VIP Care, that

12 green that you see there.

13 Q Okay. But the parts that are in green are the

14 schedule as far as I'm concerned because it looks like

15 it's been --

16 A It is, but --

17 Q Say it again?

18 A It is, but what you don't see because you can

19 open it up to see is that the authorization tells you

20 how many hours a week she's supposed to be working and

21 the duties.

22 Like T1019, she's supposed to be doing

23 personal care. And Humana will tell you there, of

24 course, you can't see it, but in there you click on it

25 and it will tell you how many hours you do on Monday or

Page 84

1 Friday or Saturday or Sunday a personal care, this

2 client also gets companion care and this client also get

3 homemaking services.

4 Q Okay. So, --

5 A So, Humana will know you are there.

6 Q -- let's slow down for a second. So, it says

7 on this first page, last three authorizations in blue,

8 then we see a grid and the first column says contracts

9 and if we go over maybe about four columns, it says

10 discipline. So, are you referring to this column here?

11 A That's correct. That --

12 Q Okay.

13 A -- and the next one, and the one next to it.

14 Q Okay. So let me just stop for a second. What

15 is PCA stands for?

16 A Personal care.

17 Q Personal care. Okay. And then COMP?

18 A Companion.

19 Q Got it. And HMK is homemaker?

20 A We're homemaking. Yes.

21 Q Homemaking.

22 A That's the same thing, homemaker, homemaking.

23 Q For -- I noticed that Ms. Valdivieso Cruz's

24 name is not the only one that appears on the schedule.

25 There's also somebody named Landa Pena Yanni, do we

Page 85

1 know, is that All VIP employee?

2 A At that time she was. I'm not sure she's

3 still with us. By the time she was.

4 Q So, All VIP has different caregivers providing

5 services to the same patients sometimes?

6 A That is correct.

7 Q Depending on what their specific skill set is?

8 A No, depending on the --

9 Q No.

10 A -- caregivers -- no, because once a caregiver

11 comes on board, they got the skills. This is depending

12 on who is willing to work the hours or take on that

13 shift.

14 Q Excellent. Okay. Understood. Got it. Okay.

15 And so, Ms. Valdivieso Cruz theoretically should be able

16 to provide the personal care, the companion care and the

17 homemaker care?

18 A Absolutely.

19 Q The same with Ms. Pena, Landa Pena. It's just

20 who works the hours that authorized.

21 A Yes.

22 Q Is that correct? Okay. And the only thing

23 that All VIP is doing is assigning the slots that the

24 caregiver is going to work based on the hours that

25 Humana already authorized?

<p style="text-align: right;">Page 86</p> <p>1 A Humana and the clients. Remember --</p> <p>2 <b>Q And the client.</b></p> <p>3 A -- this is not just Humana. Humana is going</p> <p>4 to operate based on their assessment with the client and</p> <p>5 their family members.</p> <p>6 <b>Q Okay. Understood. Now I'm looking at this</b></p> <p>7 <b>first sheet and we go over a few more columns to where</b></p> <p>8 <b>it says max.</b></p> <p>9 <b>Then we see numbers. We see 285 for personal</b></p> <p>10 <b>care, 150 for Companion Care and what 710 for Homemaker,</b></p> <p>11 <b>what is that max column referring to?</b></p> <p>12 A That means the most they can do. For his</p> <p>13 case, he -- for personal care that the first one, he was</p> <p>14 authorized from May 19th, 2022 to July 26th, 2022.</p> <p>15 We were authorized to provide him five hours</p> <p>16 of personal care every Monday through Friday and two</p> <p>17 hours every Saturday and Sunday. Member prefers</p> <p>18 language Spanish.</p> <p>19 Those are the instructions in the computer</p> <p>20 that you cannot see that Humana specifically sent over.</p> <p>21 <b>Q Okay. Understood. And the 285, what does</b></p> <p>22 <b>that referred to?</b></p> <p>23 A That's the unit's hours, you know, the most</p> <p>24 that we can schedule because, you know --</p> <p>25 <b>Q Yeah.</b></p>	<p style="text-align: right;">Page 88</p> <p>1 that I'm looking at here, it says S and then there's a</p> <p>2 colon and then 300 to 500, What does that stand for?</p> <p>3 A That's military time.</p> <p>4 <b>Q Right. I got it. So, I understand that, but</b></p> <p>5 <b>what does the S stand for?</b></p> <p>6 A The S is schedule.</p> <p>7 <b>Q Schedule. Okay. And then what is V stands</b></p> <p>8 <b>for under that?</b></p> <p>9 A The visit.</p> <p>10 <b>Q What does that mean? What's the difference</b></p> <p>11 <b>between those two?</b></p> <p>12 A It's, I guess it's just a way the program was</p> <p>13 written, you know, the software. It's the visit.</p> <p>14 It's -- in other words, it was confirmed.</p> <p>15 That V tells me that we received -- when you</p> <p>16 see it in green and the way you see it there, that tells</p> <p>17 me that we -- that the visit was confirmed, that we --</p> <p>18 either -- the caregiver either clocked in or clocked out</p> <p>19 or that we received the timesheet and we confirm that</p> <p>20 manually in the office and that's what that means.</p> <p>21 <b>Q Okay. And so what I'm looking at here this</b></p> <p>22 <b>patient calendar, is this a calendar that's created</b></p> <p>23 <b>before the services provided to the client or is it only</b></p> <p>24 <b>afterwards to confirm that these hours are actually</b></p> <p>25 <b>worked by the caregiver?</b></p>
<p style="text-align: right;">Page 87</p> <p>1 A Yeah.</p> <p>2 <b>Q Okay. So from May 19th, 2022 to July 26th,</b></p> <p>3 <b>2022, Mr. ZK was authorized for a total of 285 hours of</b></p> <p>4 <b>personal care?</b></p> <p>5 A During that timeframe, yes.</p> <p>6 <b>Q Got it. And then All VIP is just determining</b></p> <p>7 <b>which caregivers came to fulfill that -- those hours</b></p> <p>8 <b>based on the schedule they can work?</b></p> <p>9 A To say that we determine, it's not 100%</p> <p>10 accurate because we refer the caregiver over to the</p> <p>11 client and it's up to the client to decide if they want</p> <p>12 to keep that caregiver or not and then, you know, and in</p> <p>13 this case Diana Ramirez would know more because maybe</p> <p>14 this aide was referred to us by the client, I'm not 100%</p> <p>15 sure.</p> <p>16 So, that will be an excellent question for</p> <p>17 Diana. However, my point here is that this is</p> <p>18 determined, it's mutual parties involved here.</p> <p>19 When we refer a client a caregiver over and</p> <p>20 they stay with the case, it's because the client agree</p> <p>21 to it, it's not because we say so in other words.</p> <p>22 <b>Q Okay. Right, I understand that part, but you</b></p> <p>23 <b>did mention that the green portions of this document</b></p> <p>24 <b>where the schedule is, so for example, where -- on the</b></p> <p>25 <b>Friday which is I think July 1st based on the calendar</b></p>	<p style="text-align: right;">Page 89</p> <p>1 A They could possibly created immediately. The</p> <p>2 moment that we start services, they have to because</p> <p>3 remember, we have to follow Medicaid guidelines.</p> <p>4 It is this new EVVs compliance that we have to</p> <p>5 comply with, this new rule.</p> <p>6 So, when you provide services to Medicaid</p> <p>7 clients, the caregiver has to clock in and clock out.</p> <p>8 So, how can she clock in and clock out if we don't have</p> <p>9 a schedule for?</p> <p>10 So it has to be done immediately. That's, you</p> <p>11 know, that's the plan. It has to be done immediately.</p> <p>12 So when the caregiver arrives to the client's home, she</p> <p>13 has the ability to clock in and clock out and she</p> <p>14 conduct, you know, she clicks, you know, bathing,</p> <p>15 dressing, whatever she did all the tasks that she</p> <p>16 performed while she was with the client within that</p> <p>17 timeframe, she registered that.</p> <p>18 <b>Q And so, basically what I'm learning after --</b></p> <p>19 <b>let me ask you a question. By looking at Page 2 of the</b></p> <p>20 <b>same patient calendar for Mr. ZK, does this page</b></p> <p>21 <b>indicate that Mr. ZK had multiple caregivers assigned by</b></p> <p>22 <b>All VIP?</b></p> <p>23 A Yes, he had multiple caregivers.</p> <p>24 <b>Q And the patient had to approve all of these</b></p> <p>25 <b>caregivers?</b></p>

<p style="text-align: right;">Page 90</p> <p>1 A That's correct. And if they don't and if</p> <p>2 they're not happy, they let us know immediately and we</p> <p>3 work on it to change the situation and if we cannot meet</p> <p>4 their expectations, then we call the case manager and</p> <p>5 the case manager will refer this client to another</p> <p>6 agency.</p> <p>7 Q Okay. And when you say case manager, in this</p> <p>8 case you mean the case manager for Humana?</p> <p>9 A That's correct.</p> <p>10 Q Right. Okay. And do home health aides use</p> <p>11 this HHA patient schedule to confirm that they're being</p> <p>12 paid the correct amount of money?</p> <p>13 A No, but it ties to their money because it's--</p> <p>14 because they're saying they weren't. So, that ties to</p> <p>15 the payroll.</p> <p>16 Q Is there a way that a home health aide can log</p> <p>17 hours through this home health exchange patient calendar</p> <p>18 that they did not actually work?</p> <p>19 A They have to be in a home. So, is PPS. So, I</p> <p>20 mean, they could I guess if they're in the parking lot,</p> <p>21 I mean, they can, you know, and they get the signal</p> <p>22 perhaps. If they're a block away, yeah, they can</p> <p>23 perhaps, but it's really GPS and we can open it up and</p> <p>24 we can see, we can see where they clocked in and clocked</p> <p>25 out.</p>	<p style="text-align: right;">Page 92</p> <p>1 A Yes. I remember that's pretty much put in</p> <p>2 through Humana. So, that phone number --</p> <p>3 Q Right.</p> <p>4 A -- you see there, Humana puts it in.</p> <p>5 Q So, in that case, the home health care aide</p> <p>6 would have to ask the patient, "Can I please use your</p> <p>7 phone so that I can clock in and clock out at these</p> <p>8 times?"</p> <p>9 A That is correct, but also the client should</p> <p>10 know. The clients also -- clients should be aware of</p> <p>11 this.</p> <p>12 Q Does -- let me take this down. Does All VIP</p> <p>13 provide any cellular phones for its home health aides?</p> <p>14 A No, we do not.</p> <p>15 Q Does All VIP provide any laptops or computer</p> <p>16 equipment to home health aides?</p> <p>17 A No, we do not.</p> <p>18 Q Does All VIP require its home health aides to</p> <p>19 use any particular -- I thought I took this now. Sorry</p> <p>20 about that. I thought that was down. Let me repeat</p> <p>21 that question.</p> <p>22 Does home -- does All VIP provide any</p> <p>23 equipment to home health aides that they are required to</p> <p>24 use when administering patient care?</p> <p>25 A No, we do not require, unless of course, the</p>
<p style="text-align: right;">Page 91</p> <p>1 So, let's say they clocked in or clocked out a</p> <p>2 mile away then we know they're not with the client in</p> <p>3 their homes doing, you know, performing the duties.</p> <p>4 Q And the GPS is tracking the phone?</p> <p>5 A It's tracking their location, where you are.</p> <p>6 Q Right, but through their phone, correct?</p> <p>7 A That's correct I guess. Yeah.</p> <p>8 Q Okay. Or do you know if HHAEExchange is just</p> <p>9 tracking where the person is logged in, what if they are</p> <p>10 on a computer in the client's home and login in that</p> <p>11 way?</p> <p>12 A No, they cannot log in from the computer,</p> <p>13 that's not my understanding. No. They have to do it</p> <p>14 from either the landline phone number and remember that</p> <p>15 phone number has to be in here, in their client file in</p> <p>16 HHAEExchange. So, they just can't call from any number,</p> <p>17 you know, so --</p> <p>18 Q Okay.</p> <p>19 A -- and they have that cell phone, that cell</p> <p>20 phone is tied to them. So, whenever they clock in and</p> <p>21 clock out from the smartphone, trust me, that GPS is</p> <p>22 going to tell us where they are.</p> <p>23 Q Got it. And looking back at Page 1 of Exhibit</p> <p>24 D here, the home phone under Mr. ZK's name would be the</p> <p>25 landline that's registered to the HHAEExchange?</p>	<p style="text-align: right;">Page 93</p> <p>1 insurance company requires that, but no, we do not.</p> <p>2 Q What types of equipment do home health aides</p> <p>3 need to take with them to a patient's home to provide</p> <p>4 the care that they provide?</p> <p>5 A If let's say for example we need to monitor</p> <p>6 maybe the blood pressure of the client, the caregiver</p> <p>7 will be told.</p> <p>8 Many times the patient will have that</p> <p>9 equipment in their home and they just help the client,</p> <p>10 you know, put it on the wrist, you know, but that's</p> <p>11 pretty much it, I mean, a caregiver -- again, remember</p> <p>12 these are non- medical service. So, they really don't</p> <p>13 need equipment.</p> <p>14 Q Generally -- well, let's stick with -- no,</p> <p>15 let's -- just generally speaking for home health aides,</p> <p>16 how often do they have to come into any one of All VIPs</p> <p>17 offices for any reason?</p> <p>18 A They don't have to come at all, just in the</p> <p>19 beginning so we can make them.</p> <p>20 Q Once a home health aide is assigned to a</p> <p>21 client by All VIP, it's just the home health aide's</p> <p>22 responsibility to make their appointments, clock in and</p> <p>23 clock out and I guess they get paid through what, mostly</p> <p>24 direct deposit?</p> <p>25 A Mostly, yes. We don't speak to them unless we</p>

<p style="text-align: right;">Page 94</p> <p>1 have to. We keep communications open with the client, 2 not the caregiver.</p> <p>3 <b>Q In each All VIP office, whose job is it to</b> 4 <b>keep communication with the clients?</b></p> <p>5 A The administrators or even the care 6 coordinators. It's always good -- it's always good to 7 monitor your services, you know, its good business 8 practice, you know. Common sense.</p> <p>9 <b>Q How often does All VIP recommend that client</b> 10 <b>contact take place?</b></p> <p>11 A When it's necessary.</p> <p>12 <b>Q The -- do the All VIP home health aides have a</b> 13 <b>contractual relationship with the client?</b></p> <p>14 A Contractual, I don't think so, unless you have 15 a specific question. I don't. Contractual, I don't 16 think so.</p> <p>17 <b>Q Does All VIP patients have a contractual</b> 18 <b>relationship with All VIP. Is that right?</b></p> <p>19 A They do. They do because we have them sign a 20 contract. In fact, any agency they go to, they have to 21 sign a contract, it's not just All VIP. It's practice 22 in the business.</p> <p>23 <b>Q Okay. And so the way it works is that, All</b> 24 <b>VIP has a contractual relationship with its caregivers,</b> 25 <b>like Cruz Valdivieso, correct?</b></p>	<p style="text-align: right;">Page 96</p> <p>1 <b>Q Is there a database that All VIP has that</b> 2 <b>shows the number of clients that Ms. Cruz Valdivieso was</b> 3 <b>assigned to?</b></p> <p>4 A There's a home care software, yes.</p> <p>5 <b>Q Would that software also tell somebody how</b> 6 <b>many hours Ms. Cruz was designated to work for each of</b> 7 <b>the clients?</b></p> <p>8 A It tells you how many hours she worked.</p> <p>9 <b>Q How many hours she work. Okay. Like actually</b> 10 <b>worked by clocking in and clocking out?</b></p> <p>11 A Or based on her timesheet and in this case 12 it's going to be based on her timesheet because she did 13 not clock in and clock out.</p> <p>14 <b>Q Are you saying that Ms. Valdivieso Cruz never</b> 15 <b>clocked in and out using HHAeXchange?</b></p> <p>16 A Yeah, I'm going to say that. I'm 95% sure.</p> <p>17 <b>Q Did Ms. Valdivieso Cruz provided an</b> 18 <b>explanation for why she was not clocking in and clocking</b> 19 <b>out?</b></p> <p>20 A To me, not really. I don't know if she -- 21 again, that will be more Diana Ramirez. Me personally, 22 I know that when they, you know, when they start saying 23 stuff all, you know, knowing into the service or what 24 have you, I tell them no. 25 There's no excuses here because Medicaid</p>
<p style="text-align: right;">Page 95</p> <p>1 A Correct.</p> <p>2 <b>Q In the form of an independent contractor</b> 3 <b>agreement?.</b></p> <p>4 A Correct.</p> <p>5 <b>Q Correct. And then All VIP also has a</b> 6 <b>contractual relationship with the patient in the form of</b> 7 <b>whatever that sound check looks like.</b></p> <p>8 A We don't have a contract with the client. We 9 have an obligation perhaps -- but, we don't have, you 10 know, I mean, we supposed to provide services. We have 11 a contract with the insurance company --</p> <p>12 <b>Q Okay.</b></p> <p>13 A -- So, you know, and that's to provide 14 services, you know, to the clients.</p> <p>15 <b>Q That's only in the case that the client has</b> 16 <b>insurance though.</b></p> <p>17 A Now we do have a contract with private clients 18 that will tell you. We go out there and when we have a 19 contract with private clients, they sign a contract, 20 so --</p> <p>21 <b>Q Right.</b></p> <p>22 A -- but with Medicaid, no, it's different.</p> <p>23 <b>Q Did all of the clients that Cruz Valdivieso</b> 24 <b>was assigned to, were they all have Medicare clients?</b> 25 A As far as I know, yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 guidelines are there to stay and we have to follow them 2 and I cannot have an excuse and so I end the 3 conversation immediately and I just tell them come here, 4 we'll, you know, we'll help you, download the software 5 in a smartphone, you know, we give them the link to 6 YouTube in Spanish, in her case will be Spanish, but, 7 you know, and that's it. So, she -- I know she was 8 talking numerous times.</p> <p>9 <b>Q Okay. And was she at least told -- was she</b> 10 <b>told at least one time -- let me ask a more specific</b> 11 <b>question.</b></p> <p>12 <b>Was Ms. Valdivieso Cruz told by you at least</b> 13 <b>one time that she needed to download the HHAeXchange</b> 14 <b>software?</b></p> <p>15 A Yes, definitely. Definitely.</p> <p>16 <b>Q And do -- but you don't remember what her</b> 17 <b>response to you was as to why she was not using it?</b></p> <p>18 A No and they usually, you know, general -- they 19 usually just say internet is not working or I don't know 20 how to use it, you know.</p> <p>21 <b>Q All right. Now at some point -- oh, did</b> 22 <b>Ms. Valdivieso Cruz, was she paid through direct</b> 23 <b>deposit?</b></p> <p>24 A I believe she was direct deposit. I believe 25 she was.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q Who would know that answer for sure?</p> <p>2 A I can check real quick here, I mean. Diana,</p> <p>3 but I believe she was, I can see if I can bring her up</p> <p>4 real quick or if you have a pay stub, we can check from</p> <p>5 that too. It will have two Ds on the top.</p> <p>6 Q Let me show you an exhibit --</p> <p>7 A Little up.</p> <p>8 Q Hold on. Let me show you Exhibit F.</p> <p>9 (Thereupon, Plaintiff's Exhibit F was entered</p> <p>10 into the record.)</p> <p>11 BY MR. CUMMINGS:</p> <p>12 Q Okay. I'm now showing you --</p> <p>13 A That is direct deposit. You see the --</p> <p>14 Q Okay.</p> <p>15 A -- two Ds up there --</p> <p>16 Q Yeah.</p> <p>17 A -- She's direct deposit.</p> <p>18 Q Okay. Let me just for the record explain what</p> <p>19 we're looking at. So, I'm now showing Ms. --</p> <p>20 MR. CUMMINGS: I'm sorry, Madam Court</p> <p>21 Reporter. Are we up to Exhibit E or Exhibit F?</p> <p>22 MR. GOLDBERG: Number F. I mean, letter F.</p> <p>23 THE WITNESS: Yeah, I think F.</p> <p>24 THE COURT REPORTER: Sorry, I couldn't unmute</p> <p>25 myself. F.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q Okay. All right. And did All VIP make gross</p> <p>2 earnings of at least \$500,000 in 2020?</p> <p>3 A I'm sorry, there's someone out there with</p> <p>4 the -- cutting the grass. Can you repeat that question?</p> <p>5 Q Yes. Did All VIP make at least, gross</p> <p>6 earnings of at least \$500,000 in 2020?</p> <p>7 A I cannot say yes or no to that.</p> <p>8 Q Why is that?</p> <p>9 A I would have to -- because Medicaid has a bad</p> <p>10 habit of not paying. So, I would have to check to see</p> <p>11 if that's true or not.</p> <p>12 Q Your answer might be the same, but I'm going</p> <p>13 to go through and just ask for a couple other years</p> <p>14 also. All right. Did All VIP made gross earnings of at</p> <p>15 least \$500,000 in 2021?</p> <p>16 A For this one client?</p> <p>17 Q No, just in general.</p> <p>18 A In general, all my clients?</p> <p>19 Q Right, exactly. Yeah.</p> <p>20 A I hope so.</p> <p>21 Q Okay. All right. Is there a reason why you</p> <p>22 would think that 2021 All VIP paid at least \$500,000,</p> <p>23 but you're not sure in 2020?</p> <p>24 A I am not sure because I'm thinking -- I'm</p> <p>25 relating this to this client Cruz, but if you want me</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. CUMMINGS: F. Okay. Got it.</p> <p>2 BY MR. CUMMINGS:</p> <p>3 Q All right. So exhibit F that I'm showing Ms.</p> <p>4 McKinnon is just a document, weekly pay stubs. This is</p> <p>5 a 61 page document.</p> <p>6 This also has a VIP Bates stamp at the bottom.</p> <p>7 There's actually two Bates stamps, but this one, the</p> <p>8 more prominent one is 92 and I think this goes all the</p> <p>9 way down to 152, but anyway, looking at the very first</p> <p>10 page one of 61, Ms. McKinnon, you said that this is a</p> <p>11 direct deposit pay stub?</p> <p>12 A Yes.</p> <p>13 Q Okay. And the pay stubs, let's just stick to</p> <p>14 the first one that we're looking at here, does it show</p> <p>15 how many hours Ms. Cruz Valdivieso work?</p> <p>16 A Yes.</p> <p>17 Q And would there be an earning section?</p> <p>18 A That -- yes.</p> <p>19 Q Okay. And where it says, "Hours/units," that</p> <p>20 means that for this particular week from -- yes, it</p> <p>21 looks like December 20th, 2021 to December 26th, 2021,</p> <p>22 Ms. Valdivieso worked 55 hours?</p> <p>23 A Yes, that's correct.</p> <p>24 Q Okay. At a rate of \$13 an hour?</p> <p>25 A That's correct.</p>	<p style="text-align: right;">Page 101</p> <p>1 related in general, I can give you an answer.</p> <p>2 Q Oh, yeah. No, it's not really in general, I</p> <p>3 mean, specifically, but just in that -- for that one</p> <p>4 client.</p> <p>5 A If this specifically to Cruz the answer is,</p> <p>6 no, I do not know. I would have to check. I kind of</p> <p>7 doubt it, I will get that much for this client.</p> <p>8 Q Right, but no, what I'm --</p> <p>9 A Especially --</p> <p>10 Q Yeah, no. What I'm --</p> <p>11 A But in general --</p> <p>12 Q No. In 2020, did All VIP including all of its</p> <p>13 offices make \$500,000 that year just in gross revenue?</p> <p>14 A Yes, I -- yes, we better. Yes.</p> <p>15 Q Okay. In 2021, did All VIP have gross</p> <p>16 earnings of at least \$500,000?</p> <p>17 A I hope so. Yes.</p> <p>18 Q Okay. And then 2022, did All VIP have gross</p> <p>19 earnings of at least \$500,000?</p> <p>20 A I don't know. I haven't done my taxes. I</p> <p>21 don't think for 2022, so I wouldn't know, but I'm going</p> <p>22 to say yes --</p> <p>23 Q Okay.</p> <p>24 A -- because, you know, my employees got paid,</p> <p>25 I'm going to say yes. I would have to in order to</p>

<p style="text-align: right;">Page 102</p> <p>1 continue the business.</p> <p>2 So, I'm going to say yes although I haven't --</p> <p>3 we haven't file yet for '22.</p> <p>4 <b>Q As the owner of All VIP, are you the person</b></p> <p>5 <b>responsible for filing taxes for All VIP?</b></p> <p>6 A That is -- yes. Yes, I am.</p> <p>7 <b>Q And you're use -- All VIP hires an accountant</b></p> <p>8 <b>to help you with this status?</b></p> <p>9 A Yes. Yes, we do. I don't have to, but I do.</p> <p>10 <b>Q Okay. All right. I understood. And did All</b></p> <p>11 <b>VIP file taxes in 2020?</b></p> <p>12 A Yes.</p> <p>13 <b>Q Did All VIP file taxes in 2021?</b></p> <p>14 A Yes.</p> <p>15 <b>Q Is your -- does your signature appear on the</b></p> <p>16 <b>text documents?</b></p> <p>17 A I believe they do.</p> <p>18 <b>Q All right. Getting back specifically to Ms.</b></p> <p>19 <b>Cruz Valdivieso. Let me show you what I'm marking as</b></p> <p>20 <b>Exhibit G.</b></p> <p>21 (Thereupon, Plaintiff's Exhibit G was entered</p> <p>22 into the record.)</p> <p>23 A Okay.</p> <p>24 BY MR. CUMMINGS:</p> <p>25 <b>Q Okay. I'm now showing you a document which</b></p>	<p style="text-align: right;">Page 104</p> <p>1 number on that document?</p> <p>2 MR. CUMMINGS: Yeah, good question. So, Page</p> <p>3 1 is Bates 2, it says, "VIPdocs2-000002" and then</p> <p>4 the second page is, "VIPdocs2-000003." So, it</p> <p>5 looks like Bates Stamp 2 and 3.</p> <p>6 MR. GOLDBERG: Yeah, a Bates number -- a Bates</p> <p>7 docs two. All right. Thank you for clarifying</p> <p>8 that, sir.</p> <p>9 MR. CUMMINGS: No problem.</p> <p>10 BY MR. CUMMINGS:</p> <p>11 <b>Q Okay. I'm sorry about that Ms. McKinnon. But</b></p> <p>12 <b>please just read and let me know when you need me to</b></p> <p>13 <b>move up and down?</b></p> <p>14 A Okay. Next page, please. Okay.</p> <p>15 <b>Q Okay. Did you have an opportunity to finish</b></p> <p>16 <b>reading the statement?</b></p> <p>17 A Yeah. Yes.</p> <p>18 <b>Q Okay. And so, let me just ask you a few</b></p> <p>19 <b>questions about some of the things that have been made</b></p> <p>20 <b>in the statement.</b></p> <p>21 <b>First, do you have any personal knowledge of</b></p> <p>22 <b>the facts that Ms. Ramirez is writing in this statement?</b></p> <p>23 A Well, I --, you know, the ones that I know for</p> <p>24 sure is that she wasn't clocking in and clocking out to</p> <p>25 change, that she did call to state that she was missing</p>
<p style="text-align: right;">Page 103</p> <p>1 has -- this is a two page document which at the top says</p> <p>2 statement for a Cruz Valdivieso and then at the bottom,</p> <p>3 it's signed by Diana Ramirez on August 8th,</p> <p>4 2022.</p> <p>5 <b>My first question is, have you ever seen this</b></p> <p>6 <b>document before?</b></p> <p>7 A I briefly saw it. I didn't pay too much</p> <p>8 attention to it, but I did see it.</p> <p>9 <b>Q Okay. And did you direct Ms. Ramirez to write</b></p> <p>10 <b>the statement?</b></p> <p>11 A I did not direct her. I probably asked her</p> <p>12 for it. I'm not sure if the attorney or at the time we</p> <p>13 probably asked her for -- to give a statement, to tell</p> <p>14 us what happened --</p> <p>15 <b>Q Got it.</b></p> <p>16 A -- So, that's why she wrote it. It was more</p> <p>17 to document, in other words.</p> <p>18 <b>Q Okay. So, what I'll do is, I'm not asking you</b></p> <p>19 <b>to read it out loud and I don't need you to read it to</b></p> <p>20 <b>me, I would like you to read it to yourself. I have</b></p> <p>21 <b>control of when it can go up and down and just let me</b></p> <p>22 <b>know when you're done.</b></p> <p>23 <b>Okay. If you need me to move up and down,</b></p> <p>24 <b>then let me know.</b></p> <p>25 MR. GOLDBERG: Hey Toussaint, what's the bates</p>	<p style="text-align: right;">Page 105</p> <p>1 money.</p> <p>2 It was -- now I realized it was Diana who told</p> <p>3 me that she was working those private hours with the</p> <p>4 clients and that she was putting in those private hours</p> <p>5 on the timesheet.</p> <p>6 So, there was some kind of confusion going on.</p> <p>7 So, that's, you know, pretty much what I write, what I</p> <p>8 recall and also the other client, we had -- she kept</p> <p>9 calling the other client. I think the other client was</p> <p>10 her neighbor and she wanted the other client to call us</p> <p>11 and to harass us about her pay. So, stuff like that,</p> <p>12 you know, does refreshes my memory.</p> <p>13 <b>Q Okay. All right. And so I want to just talk</b></p> <p>14 <b>about the private hours because we talked about that a</b></p> <p>15 <b>little bit before and when Ms. Ramirez says that</b></p> <p>16 <b>Ms. Cruz was putting in private hours, what does that</b></p> <p>17 <b>mean to you?</b></p> <p>18 A That means that she's working for the client</p> <p>19 privately. She just, you know, the client and her made</p> <p>20 agreement.</p> <p>21 <b>Q And those hours were not authorized then by</b></p> <p>22 <b>Humana, let's say --</b></p> <p>23 A No.</p> <p>24 <b>Q -- in the case of Mr. ZK?</b></p> <p>25 A No, they were not authorized by Humana.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q Okay. And when a home health aide is working</p> <p>2 hours that are outside of their authorization for the</p> <p>3 insurance company authorization, then what is All VIP's</p> <p>4 responsibility for compensating that home health aide?</p> <p>5 A They are not supposed to be doing that because</p> <p>6 it's in the contract. They're not supposed to be</p> <p>7 working privately for a client that we referred them to.</p> <p>8 They are supposed to call the agency.</p> <p>9 Q Got it. And what would All VIP consider</p> <p>10 private hours?</p> <p>11 A The aide working for the client privately</p> <p>12 without notifying the agency, whether it's the aide or</p> <p>13 the client, but the aide --</p> <p>14 Q What is - sorry. Go ahead.</p> <p>15 A I'm sorry.</p> <p>16 Q No. I'm sorry. Go ahead.</p> <p>17 A The aide is not supposed to be working for our</p> <p>18 clients privately and they're not supposed to be taking</p> <p>19 our clients elsewhere either or stealing our clients in</p> <p>20 other words.</p> <p>21 Q Okay. Now when Humana authorizes -- when</p> <p>22 Humana authorizes hours and then the client agrees to a</p> <p>23 schedule, if the home health aide, in this particular</p> <p>24 case Ms. Cruz is working during those hours that the</p> <p>25 client approved, are they still considered private</p>	<p style="text-align: right;">Page 108</p> <p>1 client --</p> <p>2 Q Got it.</p> <p>3 A -- that's private hours, 10 hours are private</p> <p>4 hours. That's usually how we know what's happening.</p> <p>5 Q Got it. Okay. And so the extra 10 hours that</p> <p>6 the home health aide is working, if they're getting paid</p> <p>7 on the side by the client, let's say, "Privately," then</p> <p>8 are they -- is the home health aide then in breach of</p> <p>9 contract with All VIP?</p> <p>10 A Yes, because I like what you said, she's</p> <p>11 getting paid on the side, under the table. No, you're</p> <p>12 not allowed to do that and yes, they are in breach of</p> <p>13 contract, absolutely.</p> <p>14 Q And so, the documents that we looked at before</p> <p>15 Ms. Valdivieso Cruz's on boarding documents, do they</p> <p>16 explain that that situation that we just talked about</p> <p>17 with private hours and being paid privately by the</p> <p>18 client are a breach of the contract with All VIP?</p> <p>19 A It's in the contract and not only it's in the</p> <p>20 contract, but her been an aide for so long, X amount of</p> <p>21 years and working for so many other agencies which I can</p> <p>22 prove, tells me that she knows, bottom line, she's</p> <p>23 aware.</p> <p>24 Q Besides Mr. ZK, do you -- does All VIP have</p> <p>25 other clients who Ms. Valdivieso Cruz apparently worked</p>
<p style="text-align: right;">Page 107</p> <p>1 hours?</p> <p>2 A Wait, I'm sorry. Can you rephrase, can you</p> <p>3 repeat that question? I'm sorry.</p> <p>4 Q Yeah, let me just give an example. So for</p> <p>5 example, let's say Humana approves, you know, however,</p> <p>6 you know, 300 hours in a certain period and then the</p> <p>7 client says, "Okay. Well, I want to be seen Friday,</p> <p>8 Saturday and Sunday" and then All VIP does not set the</p> <p>9 home health data for particular Friday, Saturday and</p> <p>10 Sunday, you know, let's just say it's the first, second</p> <p>11 and third, happened to be Friday, Saturday and Sunday,</p> <p>12 but the caregiver works those days, are they still</p> <p>13 considered private hours that first, second and third</p> <p>14 day of the week or of the month?</p> <p>15 A It all depends because if they work those</p> <p>16 hours that we have authorization from Humana, they know</p> <p>17 they're not private --</p> <p>18 Q Okay.</p> <p>19 A -- that's Humana, you know.</p> <p>20 Q Okay. So, private hours are essentially just</p> <p>21 any hours that are not on the patient calendar schedule</p> <p>22 that we saw?</p> <p>23 A No, I would say private hours are hours, like,</p> <p>24 in other words, if Humana gives his client 50 hours a</p> <p>25 week, right, if aide work 60 hours a week with that</p>	<p style="text-align: right;">Page 109</p> <p>1 private hours for?</p> <p>2 A Not that I'm aware, only this couple. She had</p> <p>3 a good relationship with them and it's my understanding</p> <p>4 also that she hired you, but I don't know if that's true</p> <p>5 or not, but and that she had a good relationship with</p> <p>6 them.</p> <p>7 Q Okay. And does All VIP claim that</p> <p>8 Ms. Valdivieso took some of its clients?</p> <p>9 A She took these two for sure and she was trying</p> <p>10 to take the third one and she called the office and</p> <p>11 alerted us to it because they were neighbors, I guess,</p> <p>12 yeah, neighbors, she was going over there and knocking</p> <p>13 on her door and pretty much harassing the client and</p> <p>14 demanding the client to leave All VIP care for X, Y and</p> <p>15 Z reasons and then she went to the, you know, to a</p> <p>16 secret family and she started problems with them and</p> <p>17 that's why you see that that is you on Google review</p> <p>18 because she went over there and she started to pop.</p> <p>19 Q Now when you said that she took these two</p> <p>20 clients, I thought you were referring to the ZKs, who</p> <p>21 are the neighbors that you're referring to?</p> <p>22 A There is a neighbor that she has that she was</p> <p>23 working for and I think it's in that letter, but let me</p> <p>24 see if I see the name of that client here, was it</p> <p>25 Menendez or something?</p>

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1 Q I'm pulling back up Exhibit --

2 A Where was it? Let's see.

3 Q -- G, the statement from Ms. Ramirez. Do you

4 know if the neighbor that you're referring -- the

5 neighbor of Ms. Cruz Valdivieso?

6 A There it is, Angela Menendez. Do you see it

7 right there?

8 Q Right.

9 A That's her.

10 Q Angela Menendez was Ms. Cruz's neighbor?

11 A Yes, I believe so.

12 Q Okay.

13 A The neighbor and also a client of ours, I'm

14 just going to confirm just to make sure. I don't

15 really, you know, deal with the Broward office that

16 much, but I believe that she was our client and a

17 neighbor. There was a neighbor, but she was knocking on

18 her door.

19 Q Okay. And that neighbor if it was Angela

20 Menendez, was also an All VIP client?

21 A Correct. And Diana Ramirez will know more

22 about that.

23 Q Does All VIP claim that Ms. Valdivieso Cruz

24 violated her non-compete agreement by taking Ms.

25 Menendez?

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1 A She -- I don't think she took Ms. Menendez, I

2 don't think, but she did take the ZK, both of them. She

3 took them to another agency.

4 Q Besides Cesar ZK and I guess his wife or

5 whoever the other client was --

6 A Yeah, Yolanda, Yolanda I think.

7 Q Okay. So Yolanda and Cesar ZK, does all the

8 IP claim that Ms. Valdivieso Cruz took any other of its

9 clients?

10 A I don't recall any other, that would be a good

11 question for Diana. I just know that these two for

12 sure.

13 Q And when All VIP says that Ms. Valdivieso Cruz

14 took these clients, what exactly is the allegation

15 there?

16 A There's no allegation. She did it. She took

17 the two clients, I believe it was senior nannies. I

18 have it all written down somewhere.

19 She went and she took them to another agency

20 that they want to hear and they call the case manager at

21 Humana and Humana case manager transferred everything

22 over to the new agency.

23 Q And what exactly -- what part of

24 Ms. Valdivieso Cruz's contract with All VIP that she

25 violated by doing that?

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1 A She can't steal our clients. She can't take

2 our clients to someplace else. It's in there, you can't

3 do that.

4 Q Do the clients have the ability to cut off

5 their contract with All VIP at any time?

6 A That's right, they can.

7 Q And why does All VIP think that Ms. Valdivieso

8 Cruz encouraged or I guess told the ZK's to go to

9 another agency rather than it just be the Zk's on

10 choice, personal choice?

11 A You know, that's probably a good question for

12 Ms. Cruz, but she did do that. She went to the clients

13 and she started issues, just like she went to the other

14 client, Ms. Menendez I believe and she started telling

15 them stories and not only she do that, she also went to

16 the other caregivers on the case and started issues too.

17 She was the one that started everything.

18 She got the clients all upset. In fact, I

19 believe the client even paid her out of pocket. She got

20 the client so upset that I believe they, like I said,

21 they did a Google review, the negative Google review

22 which was terrible and then I believe they hire your

23 services.

24 Q Right. But when you said that, let me just

25 break this down. That Ms. Valdivieso Cruz told clients

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1 to complain about All VIP, what is your basis of

2 information for that statement?

3 A From what I hear from the clients and from the

4 caregivers.

5 Q So are you saying that after the ZK's

6 transferred to another agency, that All VIP still had

7 contact with them?

8 A With the clients?

9 Q Right.

10 A I don't think we have much contact with them,

11 but again, you know, Diana will be -- she would have

12 more contact with them than I would have, I don't

13 recall, maybe I did. I'm not sure if I did regarding

14 pay. I don't remember. I'm sorry.

15 Q Okay. Now what I want to find out is did, you

16 know, the ZK's, Yolanda or Cesar personally tell you or

17 somebody else that Diana -- I'm sorry, that Ms. Cruz

18 Valdivieso told them to leave All VIP?

19 A She -- not with me, but I guess, but she

20 definitely mentioned that to the other aides on the

21 case.

22 This is how we found out. She went to the

23 other aides on the case and she said to them, "Listen,

24 go register a Senior Nanny because we're taking this

25 case and if you want to come with us and you want to

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1 continue working here, call Senior Nannies."  
 2 **Q So, Senior Nannies is another agency?**  
 3 A Nurse registry, yes.  
 4 **Q Nurse registry in competition with All VIP?**  
 5 A Well, I guess you could call it competition,  
 6 but. Yeah, because they do the same thing we do.  
 7 **Q Okay. Had you heard of Senior Nannies before**  
 8 **Ms. Valdivieso Cruz started working with All VIP?**  
 9 A Sure, for Senior Nannies. They've been around  
 10 for a long time.  
 11 **Q Okay. And when you said other aides, you**  
 12 **meant home health aides working for All VIP told you**  
 13 **that Ms. Valdivieso Cruz was trying to get them to come**  
 14 **over to Senior Nannies?**  
 15 A To be specific and accurate, I'm talking about  
 16 caregivers on the same case as Ms. Cruz, on the same  
 17 case with the CKs.  
 18 **Q Would some of those caregivers that you're**  
 19 **referring to be on that schedule that I showed you**  
 20 **earlier such as --**  
 21 A They could be. Yes, they should be.  
 22 **Q Did you speak to those caregivers personally?**  
 23 A I think I did. I think there was one that I  
 24 spoke to and I -- and the reason I say that is because I  
 25 remember saying to one of them and also I spoke to

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1 Diana. I remember saying to her, "Listen, you know, if  
 2 you're going to be stealing my clients, we're going to  
 3 remove you from the roster, you know, and you're in  
 4 breach of contract and I can't have," you know and she  
 5 said, I believe she, you know, she understood and I  
 6 believe she said she wasn't going to do that.  
 7 **Q That's a conversation that you personally had**  
 8 **with Ms. Valdivieso?**  
 9 A Right, that I have with one of them. With one  
 10 of them. With one of the aides. I just came --  
 11 **Q Oh, with one of the aides?**  
 12 A One of the aides that I had a conversation.  
 13 **Q One of the aides. Okay. Now did you --**  
 14 A And Diana, I also had the conversation with  
 15 Diana Rodriguez as well, I mean, Diana Ramirez as well.  
 16 I did not want to keep aide that was stealing  
 17 our clients. That were in breach of contract, I did not  
 18 want to keep them on the roster.  
 19 **Q Okay. Did All VIP have to terminate the**  
 20 **employment of any other home health aide that worked on**  
 21 **the same clients as Ms. Valdivieso Cruz due to this**  
 22 **stealing client's issue?**  
 23 A If they steal clients, we do terminate them.  
 24 We do. We remove them from the roster. In this case it  
 25 was very simple because the client left with the aide,

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1 but let's just suppose that the client doesn't leave,  
 2 what we do is we will allow this -- we will allow this  
 3 aide to remain with the client, but we won't give her  
 4 any new clients, if I'm making myself clear because --  
 5 **Q No, I understand.**  
 6 A -- remember, we do not order the independent  
 7 contractors, okay, we don't give them orders. Okay. But  
 8 -- so we have to focus on the client. If the client  
 9 tells me, "That's the aide I want," I have to give them  
 10 that aide.  
 11 The only time that I say no, this aide does  
 12 not work for this agency is when they do not meet  
 13 federal and state guidelines.  
 14 **Q Okay. Understood. And now just getting back**  
 15 **to how All VIP knows that Ms. Valdivieso Cruz stole the**  
 16 **ZK's away from All VIP, is that because another home**  
 17 **health aide say that they knew they had that information**  
 18 **or I just want to know how All VIP knows?**  
 19 A I think there's a number of things, in other  
 20 words, she behaved if I, you know, the fact that she  
 21 didn't take on the case.  
 22 The fact that Humana, Humana I believe  
 23 confirmed it, I'm not 100% sure on that, the fact that  
 24 the other aide spoke, the fact that the other clients  
 25 spoke, she also wanted to get the other client to also

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1 go to the other agency, so there were numerous reasons  
 2 why we came to that conclusion.  
 3 **Q Okay. All right. You're aware that All VIP**  
 4 **sued Ms. Valdivieso Cruz in State Court, correct?**  
 5 A That's right. There was - yes --  
 6 **Q Okay.**  
 7 A -- breach of contract.  
 8 **Q Right. Now without getting into any**  
 9 **conversations that you had with this attorney or your**  
 10 **previous attorney, why is All VIP -- I know you just**  
 11 **said breach of contract, but what one of the factual**  
 12 **reasons why All VIP is suing Ms. Valdivieso Cruz?**  
 13 A The factual reason is because she took my  
 14 client to another agency and she was trying to take  
 15 another client. In addition to that, she wanted to also  
 16 pay the caregiver on the case to the other agency, that  
 17 is factual, that is fact.  
 18 **Q Does All VIP claim that Ms. Valdivieso Cruz**  
 19 **owes it any money?**  
 20 A Say that again? I'm sorry.  
 21 **Q Does All VIP claim that Ms. Valdivieso Cruz**  
 22 **owes it any money?**  
 23 A To All VIP Care that she owes us money?  
 24 **Q Yes.**  
 25 A Oh, yeah. She owes us money because we lost

<p style="text-align: right;">Page 118</p> <p>1 breach of contract.</p> <p>2 <b>Q How much money does Ms. Cruz owe All VIP?</b></p> <p>3 A We haven't come to that conclusion yet, but</p> <p>4 she definitely owes us a lot of money.</p> <p>5 <b>Q And when you say a lot, like could you</b></p> <p>6 <b>ballpark that, is it in the 1000s, 10s of 1000s, 100s of</b></p> <p>7 <b>1000s?</b></p> <p>8 A It's probably more than 30 grand. She owes us</p> <p>9 a lot of money.</p> <p>10 <b>Q And did All VIP -- was All VIP aware that --</b></p> <p>11 <b>when did All VIP become aware that Ms. Valdivieso Cruz</b></p> <p>12 <b>allegedly stole its clients?</b></p> <p>13 A Pretty much immediately, you know, when --</p> <p>14 pretty much immediately because I -- and again, Diana</p> <p>15 Ramirez might know more on this, but, you know, I know I</p> <p>16 heard something, "Oh Liz, that you're aware that, you</p> <p>17 know, that Cruz is leaving and she's taking the clients,</p> <p>18 you know," and, so that type of thing.</p> <p>19 I think it was Diana who called, but I'm not</p> <p>20 100% sure.</p> <p>21 <b>Q Got it. And what attempts did All VIP make to</b></p> <p>22 <b>get its clients back from Ms. Valdivieso Cruz?</b></p> <p>23 A I think that would be a question more for</p> <p>24 Diana because -- but I think -- I'm not sure if -- the</p> <p>25 clients, you know, remember, the clients left without</p>	<p style="text-align: right;">Page 120</p> <p>1 time?</p> <p>2 A Absolutely. And why wasn't done, that's a</p> <p>3 question for Mr. Michael Garcia.</p> <p>4 <b>Q Michael Garcia, who's that?</b></p> <p>5 A He was the one that was supposed to file the</p> <p>6 lawsuit. It was probably sitting on his desk.</p> <p>7 <b>Q Oh, you're talking about All VIPs previous</b></p> <p>8 <b>counsel?</b></p> <p>9 A Um-hum.</p> <p>10 <b>Q Oh, okay. All right.</b></p> <p>11 A Yes.</p> <p>12 <b>Q Okay. When did All VIP retain Mr. Michael</b></p> <p>13 <b>Garcia?</b></p> <p>14 A Long time ago.</p> <p>15 <b>Q Was Ms. Valdivieso Cruz still on All VIPs</b></p> <p>16 <b>payroll at the time that Mr. Garcia was hired?</b></p> <p>17 A He was hired before she was, so. I believe</p> <p>18 she was. He was already here anyway, so.</p> <p>19 <b>Q Oh, I understand. Okay. He was just -- he</b></p> <p>20 <b>was All VIPs attorney?</b></p> <p>21 A Yeah, if we needed him, that's what we will</p> <p>22 use. Yeah --</p> <p>23 <b>Q I see. Okay.</b></p> <p>24 A -- So, he was already on board, you know.</p> <p>25 <b>Q Right. But when was he, I guess, you know,</b></p>
<p style="text-align: right;">Page 119</p> <p>1 really telling us that we're leaving, you know. it's not</p> <p>2 like the client calls and say, "Hey, you know, I'm going</p> <p>3 to leave because you didn't pay her, you know."</p> <p>4 They -- what they did was, they called the</p> <p>5 case manager. So, it was -- and then I found out</p> <p>6 through Diana and from the other aide on the case and</p> <p>7 the other client that it was true.</p> <p>8 <b>Q Okay. And what -- is Ms. Valdivieso Cruz the</b></p> <p>9 <b>first home health aide that has allegedly taken clients</b></p> <p>10 <b>from All VIP?</b></p> <p>11 A No, she's not the first, but luckily for us,</p> <p>12 we don't have that many to have that.</p> <p>13 <b>Q Did All VIP file a lawsuit against any of the</b></p> <p>14 <b>other aides or caregivers that took clients from it?</b></p> <p>15 A If we need to, we will.</p> <p>16 <b>Q But has it done as of this time besides</b></p> <p>17 <b>Ms. Valdivieso Cruz?</b></p> <p>18 A Yes.</p> <p>19 <b>Q Did those other lawsuits against other</b></p> <p>20 <b>caregivers for stealing clients come before</b></p> <p>21 <b>Ms. Valdivieso Cruz's lawsuit or after?</b></p> <p>22 A Both, before and after, but again, we've been</p> <p>23 very lucky that we don't have that many.</p> <p>24 <b>Q Are All VIP intend to file a lawsuit against</b></p> <p>25 <b>Ms. Valdivieso Cruz before she filed her lawsuit over</b></p>	<p style="text-align: right;">Page 121</p> <p>1 made aware of what was going on with Ms. Cruz, was she</p> <p>2 still on payroll?</p> <p>3 A Immediately -- yeah. No, I don't think so.</p> <p>4 Immediately when we noticed that she stole out client</p> <p>5 and she move over and I had factual information, I got</p> <p>6 my people and I got my nose, I'm all documented, that's</p> <p>7 when I call him and I say, "Hey, I need to file a suit."</p> <p>8 <b>Q Okay. Got it. And --</b></p> <p>9 A Breach of contract.</p> <p>10 <b>Q Was that before Ms. Valdivieso Cruz filed her</b></p> <p>11 <b>lawsuit for over time?</b></p> <p>12 A Absolutely, it was before. I have e-mails to</p> <p>13 prove it.</p> <p>14 <b>Q Okay. All right. Are there any questions</b></p> <p>15 <b>that you thought I would ask you that I did not ask?</b></p> <p>16 A No, I think --</p> <p>17 MR. GOLDBERG: Object to the -- objection to</p> <p>18 form.</p> <p>19 MR. CUMMINGS: I never got that objection</p> <p>20 before, Counsel, but, okay. I'm just --</p> <p>21 MR. GOLDBERG: Yeah.</p> <p>22 MR. CUMMINGS: -- is noted for the record</p> <p>23 though. I understood.</p> <p>24 MR. GOLDBERG: I appreciate that, sir.</p> <p>25 MR. CUMMINGS: What did you say?</p>

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1 MR. GOLDBERG: I say I appreciate that, sir.  
2 MR. CUMMINGS: Okay.  
3 BY MR. CUMMINGS:  
4 Q Ms. McKinnon, you can still answer the  
5 question if you have an answer to it.  
6 A No, I don't.  
7 Q Okay. All right. Is there anything else that  
8 you want to add related to Ms. Valdivieso Cruz's  
9 employment with All VIP?  
10 A Yeah, I think that I would add is that she's  
11 1099 and she's not an employee and I don't know why  
12 she's doing what she's doing and she was well informed  
13 and so, you know, she's taking this platform in the  
14 wrong way, completely in the wrong way.  
15 MR. CUMMINGS: Okay. I have no further  
16 question for you. I'm not sure if Mr. Goldberg  
17 does.  
18 MR. GOLDBERG: No question sir, form my side  
19 of the table. Thank you for the opportunity. We're  
20 going to read and we're going to print.  
21 (Deposition concluded at 02:14 p.m.)  
22 (Reading and signing of the deposition by the  
23 witness has been reserved.)  
24  
25

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1 CERTIFICATE OF REPORTER  
2 STATE OF FLORIDA  
3 COUNTY OF MIAMI DADE  
4  
5 I, SULEYDIS VIDES, Court Reporter and Notary Public  
6 for the State of Florida, do hereby certify that I was  
7 authorized to and did digitally report and transcribe  
8 the foregoing proceedings, and that the transcript is a  
9 true and complete record of my notes.  
10 I further certify that I am not a relative,  
11 employee, attorney or counsel of any of the parties, nor  
12 am I a relative or employee of any of the parties'  
13 attorneys or counsel connected with the action, nor am I  
14 financially interested in the action.  
15  
16 Witness my hand this 31st day of May, 2023.  
17  
18  
19  
20 SULEYDIS VIDES, COURT REPORTER  
21 NOTARY PUBLIC, STATE OF FLORIDA  
22  
23  
24  
25

Page 124

1 CERTIFICATE OF OATH  
2 STATE OF FLORIDA  
3 COUNTY OF MIAMI DADE  
4  
5 I, SULEYDIS VIDES, the undersigned authority,  
6 certify that LIZ VANESSA MCKINNON, appeared before me  
7 remotely pursuant to Florida Supreme Court Order AOSC20-  
8 23 and was duly sworn on the 16th day of May, 2023.  
9  
10 Witness my hand this 31st day of May, 2023.  
11  
12  
13  
14  
15 SULEYDIS VIDES, COURT REPORTER  
16 NOTARY PUBLIC, STATE OF FLORIDA  
17 Commission No.: HH 373555  
18 Commission Exp: MARCH 15, 2027  
19  
20  
21  
22  
23  
24  
25

Page 125

1 DATE: May 31, 2023  
2 TO: Liz Vanessa McKinnon  
3 C/O  
4 Randy Mark Goldberg, Esquire  
5 Randy M. Goldberg & Associates, PLLC  
6 151 Northwest 1st Avenue  
7 Delray Beach, Florida 33444  
8 IN RE: Cruz Valdivieso Figuera vs. All Vip Care Inc  
9 and Liz Velazquez McKinnon  
10 CASE NO: 0:22-CV-61553-DIMITROULEAS/HUNT  
11  
12 Dear Ms. McKinnon,  
13  
14 Please take notice that on 05/16/2023, you gave  
15 your deposition in the above-referenced matter. At that  
16 time, you did not waive signature. It is now necessary  
17 that you sign your deposition. You may do so by  
18 contacting your own attorney or the attorney who took  
19 your deposition and make an appointment to do so at  
20 their office. You may also contact our office at the  
21 below number, Monday - Friday, 9:00 AM - 5:00 PM, for  
22 further information and assistance.  
23 If you do not read and sign your deposition within  
24 thirty (30) days, the original, which has already been  
25 forwarded to the ordering attorney, may be filed with  
the Clerk of the Court.  
If you wish to waive your signature, sign your name  
in the blank at the bottom of this letter and promptly  
return it to us.  
Very truly yours,  
Suleydis Vides, Court Reporter  
Universal Court Reporting  
(954) 712-2600  
I do hereby waive my signature.  
Liz Vanessa McKinnon  
Cc: via transcript:  
Toussaint Cummings, Esquire

CRUZ VALDIVIESO FIGUERA vs ALL VIP CARE INC. AND LIZ VELAZQUEZ MCKINNON  
Mckinnon, Liz on 05/16/2023 Page 126

Page 126	
1	Errata Sheet
2	
3	NAME OF CASE: CRUZ VALDIVIESO FIGUERA vs ALL VIP CARE INC. AND LIZ VELAZQUEZ MCKINNON
4	DATE OF DEPOSITION: 05/16/2023
5	NAME OF WITNESS: Liz Mckinnon
6	Reason Codes:
7	1. To clarify the record.
8	2. To conform to the facts.
9	3. To correct transcription errors.
10	Page ____ Line ____ Reason ____
11	From ____ to ____
12	Page ____ Line ____ Reason ____
13	From ____ to ____
14	Page ____ Line ____ Reason ____
15	From ____ to ____
16	Page ____ Line ____ Reason ____
17	From ____ to ____
18	Page ____ Line ____ Reason ____
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21	From ____ to ____
22	Page ____ Line ____ Reason ____
23	From ____ to ____
24	
25	

DATE: June 24, 2023

STATE OF FLORIDA:

COUNTY OF: Broward.

REFERENCE: ALL VIP CARE, INC.

STATEMENT

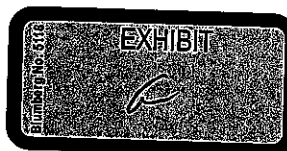
I, Angela G. McLENDIN RESIDING AT 3670 S.W. 60 AVE, DAVIE FL 33314 GIVE THIS STATEMENT, VOLUNTARILY AND OF MY OWN FREE WILL. I HAVE NOT BEEN PROMISED ANYTHING FOR GIVING THIS STATEMENT, NOR HAVE I BEEN THREATEN OR PRESSURED INTO GIVING THIS STATEMENT. I SWEAR THAT THE FOLLOWING LISTED FACTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

I have been using ALL VIP Care for the last two years. I had Dainey known as Cruz Valdivia she was my assistant for several different occasions & different times. She was working two jobs. She every wk would complain that she was owed hours, she from my apt to the office to try and straighten that out. She made the mistake of billing for 47 hrs where they reduced my hrs from 47 to 38 hrs it was an honest mistake I pointed it out to her, but she must of forgotten in 2 occasions. I recommended her for a next next day to mine and she was accepted so she became my neighbor

Witness Initials

Page 1 of 2

witness initials AM



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When she decided to quit the Agency ALL V.I.P. on Wed night she called me and informed me that she wouldn't be able to work the Thursday on for she was quitting the Agency, and going to use another agency. As a complain that she was leaving me. She suggested that I move <sup>serve</sup> to another agency so I wouldn't lose her services And I said no.

(Use additional pages if necessary)

I the undersigned Affiant acknowledge that the above representations are true and correct.

Sign: Angela H. Melendez  
Print: ANGELA MELENDEZ  
Address: 3670 SW 60th Ave  
Apt J DAVIE FL 33314  
Email: [REDACTED]  
Phone: [REDACTED]

Dated: Jun 24, 2023

STATE OF FLORIDA  
COUNTY OF Broward

Sworn to or affirmed and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 24 day of JUNE by ANGELA G. MELENDEZ

By: [Signature]  
Notary Public - State of Florida



Personally Known            or  
Produced K.I. DL

as Identification.

Select Year: 2022 Go

## The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

### Title XXIX

### Chapter 400

[View Entire Chapter](#)

#### PUBLIC HEALTH

#### NURSING HOMES AND RELATED HEALTH CARE FACILITIES

#### **400.462 Definitions.**—As used in this part, the term:

(1) “Administrator” means a direct employee, as defined in subsection (9), who is a licensed physician, physician assistant, or registered nurse licensed to practice in this state or an individual having at least 1 year of supervisory or administrative experience in home health care or in a facility licensed under chapter 395, under part II of this chapter, or under part I of chapter 429.

(2) “Admission” means a decision by the home health agency, during or after an evaluation visit to the patient’s home, that there is reasonable expectation that the patient’s medical, nursing, and social needs for skilled care can be adequately met by the agency in the patient’s place of residence. Admission includes completion of an agreement with the patient or the patient’s legal representative to provide home health services as required in s. 400.487(1).

(3) “Advanced practice registered nurse” means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(4) “Agency” means the Agency for Health Care Administration.

(5) “Certified nursing assistant” means any person who has been issued a certificate under part II of chapter 464.

(6) “Client” means an elderly, handicapped, or convalescent individual who receives companion services or homemaker services in the individual’s home or place of residence.

(7) “Companion” or “sitter” means a person who spends time with or cares for an elderly, handicapped, or convalescent individual and accompanies such individual on trips and outings and may prepare and serve meals to such individual. A companion may not provide hands-on personal care to a client.

(8) “Department” means the Department of Children and Families.

(9) “Direct employee” means an employee for whom one of the following entities pays withholding taxes: a home health agency; a management company that has a contract to manage the home health agency on a day-to-day basis; or an employee leasing company that has a contract with the home health agency to handle the payroll and payroll taxes for the home health agency.

(10) “Director of nursing” means a registered nurse who is a direct employee, as defined in subsection (9), of the agency and who is a graduate of an approved school of nursing and is licensed in this state; who has at least 1 year of supervisory experience as a registered nurse; and who is responsible for overseeing the professional nursing and home health aid delivery of services of the agency.

(11) “Fair market value” means the value in arms length transactions, consistent with the price that an asset would bring as the result of bona fide bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the compensation that would be included in a service agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the



time of the service agreement.

(12) "Home health agency" means a person that provides one or more home health services.

(13) "Home health agency personnel" means persons who are employed by or under contract with a home health agency and enter the home or place of residence of patients at any time in the course of their employment or contract.

(14) "Home health aide" means a person who is trained or qualified, as provided by rule, and who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, assists in administering medications as permitted in rule and for which the person has received training established by the agency under this part, or performs tasks delegated to him or her under chapter 464.

(15) "Home health services" means health and medical services and medical supplies furnished to an individual in the individual's home or place of residence. The term includes the following:

(a) Nursing care.

(b) Physical, occupational, respiratory, or speech therapy.

(c) Home health aide services.

(d) Dietetics and nutrition practice and nutrition counseling.

(e) Medical supplies, restricted to drugs and biologicals prescribed by a physician.

(16) "Home infusion therapy" means the administration of intravenous pharmacological or nutritional products to a patient in his or her home.

(17) "Home infusion therapy provider" means a person that employs, contracts with, or refers a licensed professional who has received advanced training and experience in intravenous infusion therapy and who administers infusion therapy to a patient in the patient's home or place of residence.

(18) "Homemaker" means a person who performs household chores that include housekeeping, meal planning and preparation, shopping assistance, and routine household activities for an elderly, handicapped, or convalescent individual. A homemaker may not provide hands-on personal care to a client.

(19) "Immediate family member" means a husband or wife; a birth or adoptive parent, child, or sibling; a stepparent, stepchild, stepbrother, or stepsister; a father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; a grandparent or grandchild; or a spouse of a grandparent or grandchild.

(20) "Medical director" means a physician who is a volunteer with, or who receives remuneration from, a home health agency.

(21) "Nurse registry" means any person that procures, offers, promises, or attempts to secure health-care-related contracts for registered nurses, licensed practical nurses, certified nursing assistants, home health aides, companions, or homemakers, who are compensated by fees as independent contractors, including, but not limited to, contracts for the provision of services to patients and contracts to provide private duty or staffing services to health care facilities licensed under chapter 395, this chapter, or chapter 429 or other business entities.

(22) "Patient" means any person who receives home health services in his or her home or place of residence.

(23) "Personal care" means assistance to a patient in the activities of daily living, such as dressing, bathing, eating, or personal hygiene, and assistance in physical transfer, ambulation, and in administering medications as permitted by rule.

(24) "Physician" means a person licensed under chapter 458, chapter 459, chapter 460, or chapter 461.

(25) "Physician assistant" means a person who is a graduate of an approved program or its equivalent, or meets standards approved by the boards, and is licensed to perform medical services delegated by the supervising physician, as defined in s. 458.347 or s. 459.022.

(26) "Remuneration" means any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind. However, if the term is used in any provision of law relating to health care providers, the term

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does not apply to an item that has an individual value of up to \$15, including, but not limited to, a plaque, a certificate, a trophy, or a novelty item that is intended solely for presentation or is customarily given away solely for promotional, recognition, or advertising purposes.

(27) “Satellite office” means a secondary office of a nurse registry established pursuant to s. 400.506(1) in the same health service planning district as a licensed nurse registry operational site.

(28) “Skilled care” means nursing services or therapeutic services required by law to be delivered by a health care professional who is licensed under part I of chapter 464; part I, part III, or part V of chapter 468; or chapter 486 and who is employed by or under contract with a licensed home health agency or is referred by a licensed nurse registry.

(29) “Staffing services” means services provided to a health care facility, school, or other business entity on a temporary or school-year basis pursuant to a written contract by licensed health care personnel and by certified nursing assistants and home health aides who are employed by, or work under the auspices of, a licensed home health agency or who are registered with a licensed nurse registry.

**History.**—s. 38, ch. 75-233; s. 2, ch. 81-318; ss. 62, 79, 83, ch. 83-181; s. 12, ch. 85-167; s. 1, ch. 87-123; s. 2, ch. 88-219; s. 1, ch. 88-323; s. 1, ch. 90-101; s. 31, ch. 90-306; s. 2, ch. 90-319; s. 25, ch. 91-57; s. 28, ch. 91-263; ss. 2, 23, ch. 93-214; s. 781, ch. 95-148; s. 56, ch. 95-228; s. 126, ch. 99-8; s. 1, ch. 99-332; ss. 102, 156, ch. 2000-318; s. 77, ch. 2000-349; s. 2, ch. 2005-243; s. 60, ch. 2006-197; s. 1, ch. 2008-246; s. 41, ch. 2012-160; s. 124, ch. 2014-19; s. 1, ch. 2015-66; s. 8, ch. 2016-145; s. 30, ch. 2018-106; s. 4, ch. 2020-9; s. 9, ch. 2020-156; s. 25, ch. 2021-51.

Select Year: 2022 ▼

## The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

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### Title XXIX

### Chapter 400

### [View Entire Chapter](#)

#### PUBLIC HEALTH    NURSING HOMES AND RELATED HEALTH CARE FACILITIES

#### **400.506    Licensure of nurse registries; requirements; penalties.—**

(1)(a) A nurse registry is exempt from the licensing requirements of a home health agency but must be licensed as a nurse registry. The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to this section and ss. 400.509-400.518 and part II of chapter 408 and to entities licensed by or applying for such license from the Agency for Health Care Administration pursuant to this section and ss. 400.509-400.518. A license issued by the agency is required for the operation of a nurse registry. Each operational site of the nurse registry must be licensed, unless there is more than one site within the health service planning district for which a license is issued. In such case, each operational site within the health service planning district must be listed on the license.

(b) A licensed nurse registry may operate a satellite office as defined in s. 400.462. The nurse registry operational site must administer all satellite offices. A satellite office may store supplies and records, register and process contractors, and conduct business by telephone as is done at other operational sites. Nurse registries may use signs and advertisements to notify the public of the location of a satellite office. All original records must be kept at the operational site.

(c) A nurse registry must provide notice, in writing, to the agency at the state and area office levels, as required by agency rule, of a proposed change of address for an operational site or the opening of a satellite office. Before relocating an operational site or opening a satellite office, the nurse registry must submit evidence of its legal right to use the proposed property and evidence that the property is zoned for nurse registry use.

(2) Each applicant for licensure and each licensee must comply with all provisions of part II of chapter 408 and this section.

(3) In accordance with s. 408.805, an applicant or licensee shall pay a fee for each license application submitted under this section and ss. 400.509-400.518, part II of chapter 408, and applicable rules. The amount of the fee shall be established by rule and may not exceed \$2,000 per biennium.

(4) A licensee that provides, offers, or advertises to the public any service for which licensure is required under this section must include in such advertisement the license number issued to it by the Agency for Health Care Administration. The agency shall assess a fine of not less than \$100 against a licensee that fails to include the license number when submitting the advertisement for publication, broadcast, or printing. The fine for a second or subsequent offense is \$500.

(5)(a) In addition to the requirements of s. 408.812, any person who owns, operates, or maintains an unlicensed nurse registry and who, after receiving notification from the agency, fails to cease operation and apply for a license under this part commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Each day of continued operation is a separate offense.

(b) If a nurse registry fails to cease operation after agency notification, the agency may impose a fine pursuant to s. 408.812.

(6)(a) A nurse registry may refer for contract in private residences registered nurses and licensed practical nurses registered and licensed under part I of chapter 464, certified nursing assistants certified under part II of chapter 464, home health aides who present documented proof of successful completion of the training required by

rule of the agency, and companions or homemakers for the purposes of providing those services authorized under s. 400.509(1). A licensed nurse registry shall ensure that each certified nursing assistant referred for contract by the nurse registry and each home health aide referred for contract by the nurse registry has presented credentials demonstrating that he or she is adequately trained to perform the tasks of a home health aide in the home setting. Each person referred by a nurse registry must provide current documentation that he or she is free from communicable diseases.

(b) A certified nursing assistant or home health aide may be referred for a contract to provide care to a patient in his or her home only if that patient is under a physician's care. A certified nursing assistant or home health aide referred for contract in a private residence shall be limited to assisting a patient with bathing, dressing, toileting, grooming, eating, physical transfer, and those normal daily routines the patient could perform for himself or herself were he or she physically capable. A certified nursing assistant or home health aide may not provide medical or other health care services that require specialized training and that may be performed only by licensed health care professionals. The nurse registry shall obtain the name and address of the attending physician and send written notification to the physician within 48 hours after a contract is concluded that a certified nursing assistant or home health aide will be providing care for that patient.

(c) When a certified nursing assistant or home health aide is referred to a patient's home by a nurse registry, the nurse registry shall advise the patient, the patient's family, or any other person acting on behalf of the patient at the time the contract for services is made that registered nurses are available to make visits to the patient's home for an additional cost.

(d) A registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter by a nurse registry is deemed an independent contractor and not an employee of the nurse registry under any chapter regardless of the obligations imposed on a nurse registry under this chapter or chapter 408.

(e) Upon referral of a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide for contract in a private residence or facility, the nurse registry shall advise the patient, the patient's family, or any other person acting on behalf of the patient, at the time of the contract for services, that the caregiver referred by the nurse registry is an independent contractor and that the nurse registry may not monitor, supervise, manage, or train a caregiver referred for contract under this chapter.

(7) A person who is referred by a nurse registry for contract in private residences and who is not a nurse licensed under part I of chapter 464 may perform only those services or care to clients that the person has been certified to perform or trained to perform as required by law or rules of the Agency for Health Care Administration or the Department of Business and Professional Regulation. Providing services beyond the scope authorized under this subsection constitutes the unauthorized practice of medicine or a violation of the Nurse Practice Act and is punishable as provided under chapter 458, chapter 459, or part I of chapter 464.

(8) Each nurse registry must require every applicant for contract to complete an application form providing the following information:

- (a) The name, address, date of birth, and social security number of the applicant.
- (b) The educational background and employment history of the applicant.
- (c) The number and date of the applicable license or certification.
- (d) When appropriate, information concerning the renewal of the applicable license, registration, or certification.

(e) Proof of completion of a continuing educational course on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome with an emphasis on appropriate behavior and attitude change. Such instruction shall include information on current Florida law and its effect on testing, confidentiality of test results, and treatment of patients and any protocols and procedures applicable to human immunodeficiency virus counseling and testing, reporting, offering HIV testing to pregnant women, and partner notification issues pursuant to ss. 381.004 and 384.25.

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(9) Each nurse registry must comply with the background screening rules for persons referred for contract. However, an initial screening may not be required for persons who have been continuously registered with the nurse registry since October 1, 2000.

(10) The nurse registry must maintain the application on file, and that file must be open to the inspection of the Agency for Health Care Administration. The nurse registry must maintain on file the name and address of the patient or client to whom nurse registry personnel are referred for contract and the amount of the fee received by the nurse registry. A nurse registry must maintain the file that includes the application and other applicable documentation for 3 years after the date of the last file entry of patient-related or client-related information.

(11) Nurse registries shall assist persons who would need assistance and sheltering during evacuations because of physical, mental, or sensory disabilities in registering with the appropriate local emergency management agency pursuant to s. 252.355.

(12) Each nurse registry shall prepare and maintain a comprehensive emergency management plan that is consistent with the criteria in this subsection and with the local special needs plan. The plan shall be updated annually. The plan shall include the means by which the nurse registry will continue to provide the same type and quantity of services to its patients who evacuate to special needs shelters which were being provided to those patients prior to evacuation. The plan shall specify how the nurse registry shall facilitate the provision of continuous care by persons referred for contract to persons who are registered pursuant to s. 252.355 during an emergency that interrupts the provision of care or services in private residences. Nurse registries may establish links to local emergency operations centers to determine a mechanism by which to approach specific areas within a disaster area in order for a provider to reach its clients. Nurse registries shall demonstrate a good faith effort to comply with the requirements of this subsection by documenting attempts of staff to follow procedures outlined in the nurse registry's comprehensive emergency management plan which support a finding that the provision of continuing care has been attempted for patients identified as needing care by the nurse registry and registered under s. 252.355 in the event of an emergency under this subsection.

(a) All persons referred for contract who care for persons registered pursuant to s. 252.355 must include in the patient record a description of how care will be continued during a disaster or emergency that interrupts the provision of care in the patient's home. It shall be the responsibility of the person referred for contract to ensure that continuous care is provided.

(b) Each nurse registry shall maintain a current prioritized list of patients in private residences who are registered pursuant to s. 252.355 and are under the care of persons referred for contract and who need continued services during an emergency. This list shall indicate, for each patient, if the client is to be transported to a special needs shelter and if the patient is receiving skilled nursing services. Nurse registries shall make this list available to county health departments and to local emergency management agencies upon request.

(c) Each person referred for contract who is caring for a patient who is registered pursuant to s. 252.355 shall provide a list of the patient's medication and equipment needs to the nurse registry. Each person referred for contract shall make this information available to county health departments and to local emergency management agencies upon request.

(d) Each person referred for contract shall not be required to continue to provide care to patients in emergency situations that are beyond the person's control and that make it impossible to provide services, such as when roads are impassable or when patients do not go to the location specified in their patient records.

(e) The comprehensive emergency management plan required by this subsection is subject to review and approval by the county health department. During its review, the county health department shall contact state and local health and medical stakeholders when necessary. The county health department shall complete its review to ensure that the plan complies with the criteria in the Agency for Health Care Administration rules within 90 days after receipt of the plan and shall either approve the plan or advise the nurse registry of necessary revisions. If a nurse registry fails to submit a plan or fails to submit requested information or revisions to the county health department within 30 days after written notification from the county health department, the county health department shall notify the Agency for Health Care Administration. The agency shall notify the nurse registry that

(f) The Agency for Health Care Administration shall adopt rules establishing minimum criteria for the comprehensive emergency management plan and plan updates required by this subsection, with the concurrence of the Department of Health and in consultation with the Division of Emergency Management.

(13) All persons referred for contract in private residences by a nurse registry must comply with the following requirements for a plan of treatment:

(a) When, in accordance with the privileges and restrictions imposed upon a nurse under part I of chapter 464, the delivery of care to a patient is under the direction or supervision of a physician or when a physician is responsible for the medical care of the patient, a medical plan of treatment must be established for each patient receiving care or treatment provided by a licensed nurse in the home. The original medical plan of treatment must be timely signed by the physician, physician assistant, or advanced practice registered nurse, acting within his or her respective scope of practice, and reviewed in consultation with the licensed nurse at least every 2 months. Any additional order or change in orders must be obtained from the physician, physician assistant, or advanced practice registered nurse and reduced to writing and timely signed by the physician, physician assistant, or advanced practice registered nurse. The delivery of care under a medical plan of treatment must be substantiated by the appropriate nursing notes or documentation made by the nurse in compliance with nursing practices established under part I of chapter 464.

(b) Whenever a medical plan of treatment is established for a patient, the initial medical plan of treatment, any amendment to the plan, additional order or change in orders, and copy of nursing notes must be filed in the office of the nurse registry.

(14) The nurse registry must comply with the notice requirements of s. 408.810(5), relating to abuse reporting.

(15)(a) The agency may deny, suspend, or revoke the license of a nurse registry and shall impose a fine of \$5,000 against a nurse registry that:

1. Provides services to residents in an assisted living facility for which the nurse registry does not receive fair market value remuneration.
2. Provides staffing to an assisted living facility for which the nurse registry does not receive fair market value remuneration.
3. Fails to provide the agency, upon request, with copies of all contracts with assisted living facilities which were executed within the last 5 years.

(b) The agency shall also impose an administrative fine of \$15,000 if the nurse registry refers nurses, certified nursing assistants, home health aides, or other staff without charge to a facility licensed under chapter 429 in return for patient referrals from the facility.

(c) The proceeds of all fines collected under this subsection shall be deposited into the Health Care Trust Fund.

(16) In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an investigation that results in a successful prosecution, excluding costs associated with an attorney's time.

(17) The Agency for Health Care Administration shall adopt rules to implement this section and part II of chapter 408.

(18) An administrator may manage only one nurse registry, except that an administrator may manage up to five registries if all five registries have identical controlling interests as defined in s. 408.803 and are located within one agency geographic service area or within an immediately contiguous county. An administrator shall designate, in writing, for each licensed entity, a qualified alternate administrator to serve during the administrator's absence.

(19) A nurse registry may not monitor, supervise, manage, or train a registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide referred for contract under this chapter. In the event of a violation of this chapter or a violation of any other law of this state by a referred registered nurse, licensed practical nurse, certified nursing assistant, companion or homemaker, or home health aide, or a deficiency in credentials which comes to the attention of the nurse registry, the nurse registry shall advise the patient to terminate the referred person's contract, providing the reason for the suggested termination; cease

referring the person to other patients or facilities, and, if practice violations are involved, notify the licensing board. This section does not affect or negate any other obligations imposed on a nurse registry under chapter 408.

(20) Records required to be filed under this chapter with the nurse registry as a repository of records must be kept in accordance with rules adopted by the agency. The nurse registry has no obligation to review or act upon such records except as specified in subsection (19).

History.—ss. 2, 4, ch. 90-101; s. 27, ch. 91-57; ss. 13, 23, ch. 93-214; s. 51, ch. 94-218; s. 1056, ch. 95-148; ss. 49, 71, ch. 98-171; s. 10, ch. 99-332; s. 14, ch. 2000-140; s. 21, ch. 2000-153; ss. 104, 161, ch. 2000-318; s. 80, ch. 2000-349; s. 25, ch. 2001-53; s. 2, ch. 2001-67; s. 148, ch. 2001-277; s. 48, ch. 2004-267; s. 1, ch. 2005-170; s. 1, ch. 2005-172; s. 8, ch. 2005-243; s. 23, ch. 2006-71; s. 79, ch. 2007-5; s. 80, ch. 2007-230; s. 103, ch. 2008-4; s. 2, ch. 2008-103; s. 9, ch. 2008-246; s. 7, ch. 2009-223; s. 7, ch. 2010-114; s. 277, ch. 2011-142; s. 12, ch. 2012-160; s. 2, ch. 2014-142; ss. 3, 4, ch. 2015-66; s. 52, ch. 2018-24; s. 32, ch. 2018-106; s. 13, ch. 2020-156.

Select Year: 2022 ▼

## The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

### [Title XXIX](#)

### [Chapter 400](#)

### [View Entire Chapter](#)

#### PUBLIC HEALTH NURSING HOMES AND RELATED HEALTH CARE FACILITIES

#### **400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.—**

(1) Any person that provides companion services or homemaker services and does not provide a home health service to a person is exempt from licensure under this part. However, any person that provides companion services or homemaker services must register with the agency. A person under contract with the Agency for Persons with Disabilities which provides companion services only for persons with a developmental disability, as defined in s. [393.063](#), is exempt from registration.

(2) The requirements of part II of chapter 408 apply to the provision of services that require registration or licensure pursuant to this section and part II of chapter 408 and entities registered by or applying for such registration from the Agency for Health Care Administration pursuant to this section. Each applicant for registration and each registrant must comply with all provisions of part II of chapter 408. Registration or a license issued by the agency is required for a person to provide companion services or homemaker services.

(3) In accordance with s. [408.805](#), applicants and registrants shall pay fees for all registrations issued under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be \$50 per biennium.

(4) Each registrant must obtain the employment or contract history of persons who are employed by or under contract with the person and who will have contact at any time with patients or clients in their homes by:

- (a) Requiring such persons to submit an employment or contractual history to the registrant; and
- (b) Verifying the employment or contractual history, unless through diligent efforts such verification is not possible. The agency shall prescribe by rule the minimum requirements for establishing that diligent efforts have been made.

There is no monetary liability on the part of, and no cause of action for damages arises against, a former employer of a prospective employee or prospective independent contractor with a registrant who reasonably and in good faith communicates his or her honest opinions about the former employee's or contractor's job performance. This subsection does not affect the official immunity of an officer or employee of a public corporation.

(5) A person that offers or advertises to the public a service for which registration is required must include in its advertisement the registration number issued by the Agency for Health Care Administration.

(6) In addition to any other penalties imposed pursuant to this section or part, the agency may assess costs related to an investigation that results in a successful prosecution, excluding costs associated with an attorney's time.

(7) The Agency for Health Care Administration shall adopt rules to administer this section and part II of chapter 408.

**History.**—ss. 2, 3, ch. 87-123; s. 3, ch. 88-219; s. 66, ch. 91-221; s. 30, ch. 91-263; ss. 6, 23, ch. 93-214; s. 787, ch. 95-148; s. 11, ch. 99-332; s. 162, ch. 2000-318; s. 81, ch. 2000-349; s. 15, ch. 2004-267; s. 81, ch. 2007-230; s. 13, ch. 2012-160; s. 14, ch. 2020-156.

**Note.**—Former s. 400.478.



U.S. Department of Labor  
Wage and Hour Division



July 13, 2018

**FIELD ASSISTANCE BULLETIN No. 2018-4**

**MEMORANDUM FOR:** Regional Administrators  
Deputy Regional Administrators  
Directors of Enforcement  
District Directors

**FROM:** Bryan Jarrett  
Acting Administrator

**SUBJECT:** Determining whether nurse or caregiver registries are employers of the caregiver

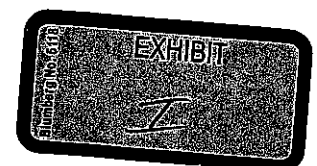
This Field Assistance Bulletin (FAB) provides guidance to Wage and Hour Division (WHD) field staff to help them determine whether home care, nurse, or caregiver registries (registries) are employers under the Fair Labor Standards Act (FLSA). A registry is an entity that typically matches people who need caregiving services with caregivers who provide the services, usually nurses, home health aides, personal care attendants, or home care workers with other titles (collectively, caregivers).

Consistent with WHD's longstanding position, a registry that simply facilitates matches between clients and caregivers—even if the registry also provides certain other services, such as payroll services—is not an employer under the FLSA. A registry that controls the terms and conditions of the caregiver's employment activities may be an employer of the caregiver and therefore subject to the requirements of the FLSA. To ensure consistent enforcement, this FAB provides specific examples of common registry business practices, which may, when the totality of factors is analyzed, establish the existence of an employment relationship under the FLSA.

**I. Background**

**A. The Typical Home Care Registry Business Model**

WHD recognizes that the home care industry serves the important purpose of ensuring that seniors and individuals with disabilities have the support they need to live and remain in their homes and communities. Generally, clients have three options for in-home care: directly and independently



hiring a caregiver, hiring a home care agency to provide the services, or obtaining a referral through caregiver registries.<sup>1</sup>

WHD has previously issued guidance concerning the FLSA's applicability to people who hire caregivers directly or employ caregivers through a home care agency.<sup>2</sup> Unlike caregivers and certain home care agencies, a registry may not provide the actual home care services. Instead, a registry typically provides matchmaking and referral services to the client by providing access to its database of qualified, pre-screened, and vetted caregivers. A registry may confirm caregiver credentials, conduct background checks, contact professional references, and engage in other quality-control measures. A registry also typically obtains information from the caregivers about the type of work they are willing to perform, their target compensation, their availability, and other personal preferences when working with clients.

A registry may also interview the client to learn, for instance, the amount and type of services the client needs, the client's budget, and the client's personal preferences. After a client provides such information, the registry usually identifies previously screened caregivers who meet the requirements for the job and facilitates an introduction. After the introduction, the caregiver and/or the client have no obligation to accept the referral. The registry may refer numerous potential caregivers to a client.

A registry may act as the liaison between the caregiver and the client but does not typically negotiate the terms or conditions of the job on either party's behalf. For some registries, when a client accepts one of the registry's referrals, the registry does not usually thereafter control the financial terms or conditions of the home care relationship. Nor does the registry typically control, supervise, or provide training or equipment to the caregiver. Rather, after the match occurs, it may be the client's responsibility to manage the care. The client may determine, among other things, the type of care provided, the caregiver's rate of pay, and the caregiver's hours. The client and the caregiver are free to change the terms and conditions of their relationship at any time.

In addition to providing matchmaking services, a registry may provide administrative services to the caregivers and clients. These services include recordkeeping, invoicing, collecting and disbursing payments, and other administrative services that are ministerial in nature. Most registries charge an administrative fee for the referral services and the ongoing administrative services. Some registries require a lump-sum payment from the client for the referral.

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<sup>1</sup> This FAB refers to "registries" for simplicity and to reflect common terms used in the industry. The FLSA does not define the term "registry." The title an entity uses does not determine whether it is obligated to comply with the FLSA; instead, the particular facts and circumstance outlined herein control. Additionally, WHD does not recommend or prefer any business model of providing home care services, nor does it offer advice concerning how entities should choose to conduct business. Rather, WHD is issuing this FAB to explain how it determines whether a registry is an employer of caregivers under the FLSA.

<sup>2</sup> Additional information is available at <https://www.doi.gov/whd/homecare/>.

## **B. General Test for Employment Relationship under the FLSA**

Whether an employment relationship exists under the FLSA depends on the “economic reality” of the circumstances.<sup>3</sup> No single fact about the relationship may conclusively determine whether an employment relationship exists between a registry and a caregiver.<sup>4</sup> Courts have provided several relevant considerations, including whether the potential employer determines the rate and method of payment, whether the potential employer has the power to hire and fire the worker, and whether the potential employer controls the worker’s schedule or conditions of employment.<sup>5</sup>

## **C. Existing Guidance on Home Care Registries**

For more than 40 years, WHD has maintained that a registry that performs only referral and payroll services is not an employer of the caregivers whom it refers. On the other hand, a registry that directs and controls the caregiver’s work and sets the caregiver’s rate of pay may be an employer of the caregiver. WHD first provided such registry-specific guidance in a 1975 Opinion Letter. The letter confirmed that:

[T]he ordinary employment agency that refers a nurse to a potential employer is not an employer of the nurse. In such a case, the usual procedure is for the individual referred to contact the potential employer and contract directly with the potential employer as to compensation, hours, and other terms of work.

WHD Opinion Letter WH-350, 1975 WL 40973, at 1 (July 31, 1975) (“1975 Opinion Letter”). In that case, however, the entity did not follow this business model. Rather, the entity “maintain[ed] a log of assignments showing the shifts worked,” “establishe[d] the rate which will be charged,” “exercise[d] control over the nurse’s behavior and the work schedule,” and “exercise[d] a form of discipline.” *Id.* WHD therefore concluded that the caregiver was the entity’s employee. *Id.*

In 2013, WHD provided additional guidance for registries in the preamble to its regulations concerning domestic service employment. Consistent with the 1975 Opinion Letter, the preamble provided analysis for the following hypothetical scenario:

ABC Company advertises as a “registry” that provides potential direct care workers. The registry conducts a background screening and verifies credentials of potential workers and assists clients by locating direct care workers who may be

<sup>3</sup> See, e.g., *Goldberg v. Whitaker House Cooperative, Inc.*, 366 U.S. 28, 33 (1961) (citing *United States v. Silk*, 331 U.S. 704, 713 (1947)); *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947); *Schultz v. Capital Int’l Sec., Inc.*, 466 F.3d 298, 304 (4th Cir. 2006) (citing *Henderson v. Inter-Chem Coal Co.*, 41 F.3d 567, 570 (10th Cir. 1994)).

<sup>4</sup> See, e.g., *Haybarger v. Lawrence Cty. Adult Prob. & Parole*, 667 F.3d 408, 418 (3d Cir. 2012) (citing *Herman v. RSR Sec. Servs.*, 172 F.3d 132, 139 (2d Cir. 1999)).

<sup>5</sup> See, e.g., *Scantland v. Jeffry Knight, Inc.*, 721 F.3d 1308, 1312 (11th Cir. 2013) (citing *Usery v. Pilgrim Equipment Co.*, 527 F.2d 1308, 1311 (5th Cir. 1976)); *Haybarger*, 667 F.3d at 418 (citing *Herman*, 172 F.3d at 139); *Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668, 675 (1st Cir. 1998) (citing *Bonnette v. Cal. Health & Welfare Agency*, 704 F.2d 1465, 1469-70 (9th Cir. 1983)); *Brock v. Mr. W Fireworks, Inc.*, 814 F.2d 1042, 1043 (5th Cir. 1987) (citing *Pilgrim Equipment Co.*, 527 F.2d at 1311).

able to meet a client's needs. ABC Company informs Ann, a direct care worker, of the opportunity to work for a potential client. If Ann is interested in the opportunity, she is responsible for contacting the client for more information. Ann is not obligated to pursue this or any other opportunity presented, and she is not prohibited from registering with other referral services or from working directly with clients independent of ABC Company. The registry does not provide any equipment to Ann, and does not supervise or monitor any work Ann performs. ABC Company has no power to terminate Ann's employment with a client. ABC Company processes Ann's payroll checks according to information provided by clients, but does not set the pay rate.

...  
In this scenario, Ann is likely not an employee of ABC Company. There is no permanency in the relationship between the registry and Ann. The registry does not provide any equipment or facilities, exercises no control over daily activities, and has no power to hire or fire. Ann is able to accept as many or as few clients as she wishes. The client sets the rate of pay and negotiates directly with Ann about which services will be provided. However, this does not mean that every "registry" will not be an employer. Rather, a fact-specific assessment must be conducted.

*Id.* Final Rule, Application of the Fair Labor Standards Act to Domestic Service, 78 FR 60,454, 60,484 (Oct. 1, 2013).

Although both the 1975 Opinion Letter and 2013 preamble provide relevant guidance, additional clarification concerning specific business practices of registries will further assist both WHD and the regulated community.

## **II. Determining Whether Caregiver Registries Are Employers Under the FLSA**

Determining whether a registry is an employer of the caregiver under the FLSA requires a thorough analysis of the registry's business model and operations. It is a case-by-case analysis, and no one factor is dispositive. The discussion below addresses some common registry business practices that WHD analyzes during investigations to determine whether an employment relationship exists. It is not an exhaustive list; additional facts relating to the caregiver's relationship with the registry may be relevant to the analysis.

### **A. Conducting Background and Reference Checks**

A registry often performs basic background checks of caregivers. These background checks typically include the collection of objective information concerning the caregiver, such as the caregiver's criminal history, credit report, licensing, and other credentials. A registry may also perform additional tailored background checks pursuant to either state or local laws. A registry's performance of such basic or legally required background checks by itself does not indicate that the registry is an employer of the caregiver.<sup>6</sup>

<sup>6</sup> Similarly, in Administrator's Interpretation 2014-2, WHD previously noted that compliance with mandatory requirements set by the Centers for Medicare and Medicaid Services is not an indicator of employer status.

If a registry's background screening evaluates additional subjective criteria, however, it may indicate that the registry (instead of the client) is selecting the caregiver. This may occur, for example, if a registry interviews a prospective caregiver to evaluate subjective factors that the registry values (such as whether the registry finds the caregiver likeable). The registry may also interview the caregiver's references to assess whether he or she would work well with a particular client. Such actions imply that a registry is pre-selecting caregivers for the client, rather than performing basic quality control and verification checks. In the typical registry business model, it is up to the client to perform such additional, subjective screening after receiving a referral from the registry. Such actions may indicate that the registry is the caregiver's employer.

### **B. Hiring and Firing**

A registry often informs its client that a potential caregiver meets the client's threshold parameters and preferences, and then introduces the two. The registry does not further participate in the hiring process. The client is free to accept or decline services from the referred caregiver. If the client hires the caregiver, the registry usually has no right to alter or terminate the terms and conditions of the caregiver's employment. As with hiring, the ultimate termination decision is the client's. A registry's inability to hire and fire employees indicates that the registry is not an employer of the caregiver.

A registry could, however, play a more active role in hiring or firing caregivers. A registry might, for example, interview or select a caregiver at the request of the client. A registry might also fire a caregiver for failing to comply with requirements and standards established by the industry, the client, or the law. In such circumstances, the registry may control the permanency of the relationship, and the caregiver may economically depend on the registry to obtain and/or keep his or her job. A registry's exercise of control over hiring or firing decisions indicates that the registry is an employer of the caregiver.

### **C. Scheduling and Assigning Work**

A registry commonly facilitates initial communication between the caregiver and the client. The caregiver and the client thereafter may independently determine the work schedules and assignments. A registry's lack of control over work schedules and assignments may indicate that a registry is not the caregiver's employer. Conversely, a registry's exercise of control over the caregiver's work schedules and assignments may indicate that the registry is an employer of the caregiver.

At times a registry may post to an online message board or send a text or email to all qualified caregivers asking them to contact a particular client if they are interested in working for the client. The registry may also narrow the offer to a subset of caregivers screened by objective criteria, such as those whose availability matches the needs of the client or who can work in a home with a smoker or pets. As yet another alternative, a registry may simply provide a client with access to its entire list of vetted caregivers or a list of caregivers who satisfy the client's criteria. In any of these scenarios, the registry is providing, not assigning, the work opportunities because it is matching the client with caregivers who meet the requisite qualifications. It is the caregiver's and client's

burden to pursue the opportunity and structure the terms of their working relationship going forward. Such communications from the registry, therefore, do not alone indicate the existence of an employment relationship.

A registry might, however, offer work assignments to a subset of caregivers based on the registry's own discretion and judgment. This may occur, for example, if a registry offers the assignment to a subset of caregivers whom the registry believes would do a better job or are more likeable. Some registries might even directly assign specific caregivers to individual clients. In either scenario, the registry may be exercising control over the caregiver, and the caregiver may economically depend on the registry's preferences and decisions. These factors may indicate the existence of an employment relationship.

#### **D. Controlling the Caregiver's Work**

A registry does not plan and provide care for the client, but might seek information concerning the type of care the client needs for matching purposes. The caregiver may not receive any instruction from the registry about how to care for clients. After the referral, a registry may choose to not monitor or manage the caregiver's methods or work habits. The registry may not, for example, instruct caregivers how to provide caregiving services, monitor or supervise caregivers in clients' homes, or evaluate caregivers' performance. The absence of such control indicates that a registry is not an employer of the caregiver.

On the other hand, a registry may provide training and control the caregiver's services after making the referral. Control over the caregiver services indicates that the registry is an employer of the caregiver. Examples of such control include setting policies that require a caregiver to provide services in a particular manner; requiring a caregiver to accept jobs with specific clients; visiting the client's home to monitor a caregiver's behavior; conducting performance evaluations of the caregiver; setting policies for a caregiver's time off from work; requiring a caregiver to call only the registry, instead of the client, if the caregiver will be late or miss a shift; and disciplining a caregiver for his or her performance.

To be sure, there are other ways in which a registry may control a caregiver's behavior and additionally restrict the caregiver's ability to independently generate profit and loss—such as limiting the number of clients to whom a caregiver may provide services, limiting the caregiver's hours, prohibiting a caregiver from registering with other referral services, or prohibiting a caregiver from working directly with clients outside of the registry. The exercise of control over caregivers indicates the existence of an employment relationship.

#### **E. Setting the Pay Rate**

A registry typically does not determine a caregiver's rate of pay. The client instead negotiates the rate of pay directly with the caregiver. In the alternative, Medicaid or another government program may determine the actual hourly wage rate if they are funding the services. Either scenario indicates that the registry is not determining the caregiver's rate of pay and, therefore, may indicate that the registry is not the caregiver's employer.

Oftentimes both the caregiver and the client will seek the registry's advice concerning appropriate pay rates. If the registry informs either the client or the caregiver about typical pay rates in the area to serve as a benchmark for negotiations, that does not indicate that the registry is the caregiver's employer. The registry is simply conveying market information that the parties may ultimately use, or ignore, as they deem fit. Similarly, a registry's action as a liaison that merely relays communications, offers, or counteroffers between the client and caregiver does not indicate that the registry is controlling the caregiver or acting as the caregiver's employer.

Of course, a registry's decision to effectively set a caregiver's rate of pay without the caregiver making the ultimate determination indicates that the registry is acting as the caregiver's employer. This may occur, for example, when a registry designates a set wage range, or when a registry offers tailored direction concerning what a caregiver should charge for specific services that a client needs (as opposed to merely informing him or her of the general market rates in the geographic vicinity). Such behavior indicates the existence of an employment relationship between the registry and caregiver.

#### **F. Receiving Continuous Payments for Caregiver Services**

A registry may charge clients a one-time, upfront fee for the service of matching a caregiver and client. It may likewise perform and charge fees for administrative or ministerial functions (like processing payroll or producing tax documents). Such charges do not indicate that the registry is the caregiver's employer.

A registry may instead choose to charge fees that fluctuate based on the number of hours that a caregiver works for the client. Such a registry may have an ongoing interest in the employment relationship, including in the number of hours the caregiver works and whether those hours are tracked accurately. The registry's fees are based on the ongoing caregiver relationship, not the registry's initial referral or administrative efforts. The caregiver's pay then depends, in part, on the amount the registry charges. Such charges, therefore, may indicate that the registry is the caregiver's employer.

#### **G. Paying Wages**

A registry often performs payroll-related functions for its clients. These functions include, for example, calculating the amount of wages owed based on the hours worked and the previously determined rate of pay, making the appropriate tax deductions, administering benefits that the caregiver has requested and for which the caregiver pays, and issuing a check or electronic deposit. If the client provides the funds directly or via an escrow account, the registry's performance of such payroll services does not indicate that the registry is the caregiver's employer.

A registry's direct payment of its own funds to the caregiver, however, may indicate that the registry is the caregiver's employer. This is true regardless of whether the registry typically receives reimbursement from the client because, in this situation, the registry may be effectively guaranteeing the payment even if the client does not ultimately pay. In such circumstances, the caregiver may be economically dependent on the registry, which indicates that the registry is the caregiver's employer.

## **H. Tracking Caregiver Hours**

A registry does not typically create and confirm records of a caregiver's hours worked. It may perform payroll services after the client or caregiver submits time records, as discussed above, but that does not indicate that the registry is the caregiver's employer. On the other hand, a registry's active creation and verification of time records may indicate that the registry may be, in fact, an employer of the caregiver. Tracking and independently verifying time worked is generally a form of supervision on which the caregiver depends to ensure proper payment. It therefore may indicate the existence of an employment relationship.

A registry might collect time sheets from caregivers or offer an electronic time verification system. A registry may also require the correct completion and submission of certain time sheets for purposes of payroll processing. These activities do not indicate that the registry is the caregiver's employer—as long as the client (not the registry) is the one actually verifying and adjusting the timekeeping information for accuracy.

## **I. Purchasing Equipment and Supplies**

A registry typically invests in office space, payroll software, timekeeping systems, and other products to operate its businesses. A registry may also provide caregivers with an option to purchase discounted equipment or supplies from either the registry or a third party. These actions, alone, do not indicate that a registry is a caregiver's employer. But in some cases a registry may purchase equipment and supplies directly for a caregiver, or direct the caregiver to purchase specified equipment and supplies. The registry may also invest in a caregiver's training or pay for his or her licenses, insurance, or medical supplies. Unlike investments in office space or payroll systems, investments in the tools necessary for the caregiver to perform his or her services may indicate that the registry is acting as the caregiver's employer, instead of simply a referral service.

## **J. Receiving EINs or 1099s**

Some caregivers may acquire an Employer Identification Number (EIN) issued by the Internal Revenue Service (IRS). State law requires most caregivers to obtain some type of liability insurance and may also impose bonding requirements. A registry may similarly require an EIN, insurance, or a bond in accordance with the law. These requirements are not relevant to determining whether a caregiver is an employee for FLSA purposes. Calling a caregiver an "independent contractor" or issuing him or her an IRS 1099 form does not preclude the caregiver from being an employee for FLSA purposes.

## **III. Conclusion**

WHD will consider the totality of the circumstances to evaluate whether an employment relationship exists between a registry and a caregiver. Because the analysis does not depend on any single factor, and because caregiver registries operate in a variety of ways, WHD will evaluate all factors (including the practices discussed above) to reach appropriate conclusions in each case.

Please contact the FLSA/Child Labor Branch at (202) 693-0067 with any questions.

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA.

ALL VIP CARE, INC.,

CASE NO.:

Plaintiff,

vs.

CRUZ VALDIVIESO FIGUERA,

Defendant.

**COMPLAINT**

Plaintiff, ALL VIP CARE, INC. ("ALL VIP") hereby sues Defendant, CRUZ VALDIVIESO FIGUERA ("Contractor") and alleges that it is entitled to relief on the following facts:

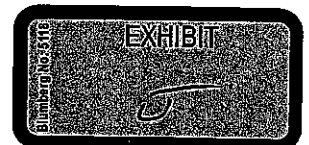
**PARTIES, VENUE AND JURISDICTION**

1. This is an action for damages in excess of \$30,000.00, exclusive of interest, costs and attorney's fees.
2. At all times material hereto, ALL VIP is a Florida For-Profit Corporation with its principal place of business located in Palm Beach County, Florida and authorized to do business in the State of Florida.
3. At all time material hereto, Contractor resides in Broward County, Florida.
4. Venue is proper in Broward County because it is where the Defendant resides.

**GENERAL ALLEGATIONS**

5. ALL VIP is a licensed Nurse Registry in the State of Florida and does business in Broward and Palm Beach Counties.
6. ALL VIP has various business associations, independent contractors, relationships and clients that are critical to ALL VIP's business model to run a profitable business.

AMC MICHAEL GARCIA, PA



7. Contractor was an independent contractor that had a Contract with ALL VIP.
8. Contractor was a Home Health Aide that provided services to the ALL VIP's clients.
9. As an independent contractor of ALL VIP, Contractor had access and given knowledge of ALL VIP's pricing structure, trade secret and confidential information.
10. Due to Contractor's knowledge of ALL VIP's pricing structure, trade secret and confidential information, she has now illegally taken advantage of said information for her benefit by taking clients of ALL VIP.

**COUNT-I**  
**BREACH OF CONTRACT**

ALL VIP hereby re-alleges paragraphs 1 through 10 as if fully set forth herein and further alleges as follows:

11. On May 3, 2021, Contractor signed a Contract with non-compete provision with ALL VIP ("Contract"). *A true and correct copy of the Contract is attached hereto as Exhibit "A"*
12. In violation of the Non-Compete provision, Contractor has contacted and taken a client of ALL VIP.
13. Contractor has solicited business from ALL VIP's clients that are critical to ALL VIP's business model and running a profitable business.
14. Contractor has misappropriated ALL VIP's pricing structure, trade secret and confidential information to divert business opportunities and customers from ALL VIP.
15. Contractor's actions listed above have materially breached the Non-Compete provision and Contract.
16. Contractor's actions also breach the Statement of Commitment and Code of Conduct sections of the Contract.
17. Due to Contractor's material breach, ALL VIP has been damaged in excess of

MICHAEL GARCIA, PA

\$30,000.00.

18. All conditions precedent to bringing this action have occurred, have been performed or have been waived.

19. ALL VIP has been caused to retain undersigned counsel to represent it in this action and are obligated to pay the reasonable attorney's fees and costs.

20. ALL VIP is entitled for said attorney's fees and costs pursuant to § 542.335, *Fla. Stat.* and the terms of the Contract.

WHEREFORE, Plaintiff, ALL VIP CARE, INC., demands judgment against Defendant, CRUZ VALDIVIESO FIGUERA damages, plus attorney's fees, interest, costs, and for ~~another~~ relief as the Court deems proper and just.

**COUNT-II**  
**ENFORCEMENT OF RESTRICTIVE**  
**COVENANTS PURSUANT TO § 542.335, FLA.**  
**STAT.**

ALL VIP hereby re-alleges paragraphs 1 through 10 as if fully set forth herein and further alleges as follows:

21. This is an action pursuant to § 542.335, *Fla. Stat.*

22. On May 3, 2021, Contractor signed a Contract that contained non-compete provision with ALL VIP. *See Exhibit A.*

23. ALL VIP seeks to enforce the restrictive covenant in non-compete to protect its legitimate business interest of pricing structure, trade secret, confidential information, vendor information and specific geographic location of Broward and Palm Beach County.

24. In violation of the Non-Compete agreement, Contractor poached one of ALL VIP's client.

25. Contractor has misappropriated ALL VIP's pricing structure, trade secret and confidential information by approaching ALL VIP's clients.

/s/ MICHAEL GARCIA, PA

26. Contractor has solicited business from ALL VIP's clients that is critical to ALL VIP's business model and running a profitable business.

27. Contractor has misappropriated ALL VIP's pricing structure, trade secret and confidential information to divert business opportunities and customers from ALL VIP to herself.

28. Defendant's actions listed above have materially breached the Non-Compete provision and Contract.

29. Due to Contractor's material breach, ALL VIP has been damaged and will continued to incur damages, if the Court does not enter an Order to prevent Contractor from misappropriating ALL VIP's pricing structure, trade secret and confidential information to divert business opportunities and customers from ALL VIP; and preventing Contractor from working for ALL VIP's current and former clients.

30. All conditions precedent to bringing this action have occurred, have been performed or have been waived.

31. ALL VIP has been caused to retain undersigned counsel to represent it in this action and is obligated to pay the reasonable attorney's fees and costs.

32. ALL VIP is entitled to said attorney's fees and costs pursuant to § 542.335, *Fla. Stat.* and the terms of the Contract.

WHEREFORE, Plaintiff, ALL VIP CARE, INC. demands this Court enter an Order preventing Defendant, CRUZ VALDIVIESO FIGUERA, from misappropriating ALL VIP's pricing structure, trade secret and confidential information to divert business opportunities and customers from ALL VIP; and preventing Contractor from working for ALL VIP's current and former clients, plus an award of attorney's fees, interest, costs, and for such other relief as the Court deems proper and just.

BY: MICHAEL GARCIA, PA

**COUNT III-TORTIOUS INTERFERENCE**

ALL VIP hereby re-alleges paragraphs 1 through 10 as if fully set forth herein and further alleges as follows:

33. ALL VIP had a contract with certain client in which ALL VIP agreed to provide Home Health Aides to the clients, in exchange the clients agreed to pay ALL VIP an hourly rate for services.

34. Contractor was aware of ALL VIP's contract with the clients because Contractor was assigned by ALL VIP to provide Home Health Aide services to the client.

35. Contractor intentionally and unjustifiably interfered with ALL VIP's contract by approaching the clients from ALL VIP.

36. As a result of Contractor's intentional and unjustified interference, ALL VIP has been damaged in excess of \$30,000.00.

WHEREFORE, Plaintiff, ALL VIP CARE, INC, demands judgment against Defendant, CRUZ VALDIVIESO FIGUERA, for the damages, plus costs, and for such other relief as the Court deems proper and just.

**MICHAEL GARCIA, PA.**  
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 MICHAEL GARCIA, PA

Filing # 165664021 E-Filed 01/28/2023 06:17:34 AM

IN THE CIRCUIT COURT FOR THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CASE NO: CACE-22-014991

**ALL VIP CARE, INC.,**

Plaintiff,

vs.

**CRUZ VALDIVIESO FIGUERA,**

Defendants.

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**NOTICE OF VOLUNTARY DISMISSAL**

The Plaintiff files this Notice of Voluntary Dismissal without Prejudice of this present action, due to the fact that Federal Judge William P. Dimirtouleas, under Case 0:22-CV-61553-WJD, of the Southern District of Florida, on January 5, 2023, ordered that the same and similar claims set forth in this state action are approved to be counterclaims in the above cited federal case. [DE-36]. On January 28, 2023, the Defendant filed such counterclaims in the above federal case.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this pleading which was filed with the Clerk of the Court and was provided to: **Brian H. Pollack, Esquire**; Fairlaw Firm, 135 San Lorenzo Avenue, #770, Coral Gables, FL 33146, [Brian@fairlawattorney.com](mailto:Brian@fairlawattorney.com), and all attorneys listed on and via the ECM System on **January 28, 2023**.

/s/ RANDY M. GOLDBERG, ESQUIRE

Florida Healthcare Law Firm

FBN: 045187

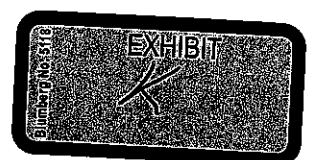
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IN THE CIRCUIT COURT FOR THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CASE NO: CACE-22-014991

ALL VIP CARE, INC.,

Plaintiff,

vs.

CRUZ VALDIVIESO FIGUERA,

Defendants.

JOINT STIPULATION FOR SUBSTITUTION OF COUNSEL

IT IS HEREBY STIPULATED AND AGREED that Michael Garcia, Esquire, of Michael Garcia, P.A. will withdraw as counsel for the PLAINTIFF, and that Randy M. Goldberg, Esquire, of the Florida Healthcare Law Firm, will be substituted as counsel for the PLAINTIFF.

Consent to Change of Counsel

I, Liz Velazquez McKinnon, individually and as President of Defendant All VIP Care, Inc, requested and consent to the above change of counsel on my behalf and on behalf of All VIP Care, Inc.

By: 

Liz Velazquez McKinnon

Dated: 12/18/2022

By: 

Michael Garcia, Esquire

Michael Garcia, P.A.

100 SE 6<sup>th</sup> Street

Fort Lauderdale, FL 33301

Migarcia11204@yahoo.com

Florida Bar No. 93749

/s/ Randy M. Goldberg, Esquire

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/s/ RANDY M. GOLDBERG, ESQUIRE

Florida Healthcare Law Firm

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